

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHASE THOMAS WELLS,  
Appellant,  
vs.  
CALVIN JOHNSON, WARDEN,  
Respondent.

No. 85449-COA

FILED

JUN 13 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING*

Chase Thomas Wells appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 12, 2022. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

In his petition, Wells alleged claims of ineffective assistance of counsel. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must show a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry—deficiency and prejudice—must be shown. We

give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Wells claimed counsel was ineffective for coercing Wells into pleading guilty by telling Wells that counsel would not defend Wells' "losing case" if it went to trial and instead Wells would be "on his own." Wells supported his argument with specific factual allegations of coercion by way of attorney abandonment that are not belied by the record and, if true, would have entitled him to relief. Accordingly, we conclude the district court erred by denying this claim without conducting an evidentiary hearing. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, we reverse the district court's denial of this claim and remand for the district court to conduct an evidentiary hearing on this ineffective-assistance-of-counsel claim.

Second, Wells claimed counsel was ineffective for failing to investigate and prepare a defense based on the fact that the inculpatory physical evidence belonged to a person other than Wells. He further claimed that, as a result, counsel coerced him into pleading guilty.

Wells pleaded guilty to one count of establishing or possessing a financial forgery laboratory. Wells claimed that he informed counsel that the items alleged to have been used in the forgery laboratory were found in a vehicle that belonged to an adult female, not Wells. The district court found that when Wells was arrested, he was driving the vehicle in which the items were discovered. The district court's finding is supported by substantial evidence. Wells thus failed to allege specific facts demonstrating he had a defense to the charged offense based on the vehicle

belonging to someone else. *See Glispey v. Sheriff*, 89 Nev. 221, 223-24, 510 P.2d 623, 624 (1973) (discussing constructive possession of contraband). Accordingly, Wells failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial absent counsel's inaction. Therefore, we conclude the district court did not err by denying this claim.

Third, Wells claimed counsel was ineffective for coercing Wells into pleading guilty by failing to communicate with him. During his plea canvass, Wells stated he read the plea agreement and that counsel was available to answer any questions he had. Wells failed to allege specific facts demonstrating how additional communication would have affected his decision to plead guilty. Accordingly, Wells failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial absent counsel's alleged error. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Wells claimed counsel was ineffective for telling the sentencing court that Wells was not at the second scheduled sentencing hearing because he overslept. Wells claimed his grandmother passed away and that he asked counsel to seek a continuance for that reason. Wells claimed that counsel's alleged errors resulted in the court imposing a sentence greater than the sentence negotiated in the guilty plea agreement.

Counsel informed the court that Wells had overslept but was trying to get to court and that Wells' grandmother had passed away. Counsel sought a continuance but the court instead entered a bench warrant. Wells' guilty plea agreement allowed the State to argue for habitual criminal treatment at sentencing if Wells failed to appear at subsequent hearings or was arrested on new charges. Wells failed to appear

at two sentencing hearings and was arrested on a charge of attempted murder with the use of a deadly weapon for shooting at the bail bonds person who attempted to apprehend him after his bail was revoked for failing to appear at the second scheduled sentencing hearing. Accordingly, Wells failed to demonstrate counsel's performance was deficient or a reasonable probability he would have received a more favorable sentence but for counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Fifth, Wells claimed that counsel was ineffective for consenting to the State's request to delay sentencing so the State could file documents in support of habitual criminal adjudication. Wells was apprehended following his failure to appear at the second scheduled sentencing hearing. At a subsequent hearing on Wells' custody status, the State argued that Wells' new criminal charge violated the plea agreement and noted that the State had filed a notice of its intent to seek punishment as a habitual criminal. The State argued that Wells was entitled to notice and inspection of the certified copies of the judgments of conviction and sought a continuance. The State also argued that a continuance was necessary because it was seeking a supplemental presentence investigation (PSI) report. Counsel argued that he was prepared to go forward with sentencing and that a supplemental PSI was not necessary.

Wells failed to explain what else counsel should have argued or to allege specific facts demonstrating that the State would not have been granted a continuance had counsel opposed it. In addition, the State had regained the right to pursue habitual criminal treatment based on Wells' post-plea conduct. Accordingly, Wells failed to demonstrate counsel's performance was deficient or a reasonable probability he would have

received a more favorable sentence had counsel challenged the continuance. Therefore, we conclude the district court did not err by denying this claim.

Sixth, Wells claimed that counsel was ineffective for failing to present evidence regarding his bipolar disorder at sentencing. The presentence investigation report provided that Wells reported no significant mental health issues, and Wells failed to attach to his petition any evidence that he had been diagnosed with bipolar disorder. *See* NRS 34.370(4). Accordingly, Wells failed to demonstrate counsel's performance was deficient or a reasonable probability he would have received a more favorable sentence but for counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Seventh, Wells claimed counsel was ineffective for failing to present at sentencing evidence of Wells' grandmother's death and the circumstances regarding Wells' failure to appear at the second scheduled sentencing hearing. Wells alleged he called counsel the morning of the hearing and asked counsel if he could have the hearing continued so Wells could bury and mourn his grandmother, who had passed away two days prior. Wells claimed he informed counsel he would attend the hearing if a continuance was not possible but that counsel did not call him back until after the hearing had concluded.

Wells failed to attach to his petition the evidence he wanted presented at sentencing regarding his grandmother. In addition, the sentencing court was presented with the circumstances regarding Wells' failure to appear at the second sentencing hearing. Counsel told the court at that hearing that Wells' grandmother had passed away, and he sought a continuance. During the ultimate sentencing hearing, counsel objected to the State's right to argue for a sentence other than the one negotiated and

argued that Wells disputed that he was willfully late for court. During his allocution, Wells explained the circumstances regarding his failure to appear, including that his grandmother passed away and that he contacted counsel to seek a continuance for that reason. Accordingly, Wells failed to demonstrate counsel's performance was deficient or a reasonable probability he would have received a more favorable sentence but for counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Eighth, Wells claimed counsel was ineffective for failing to effectively advocate at sentencing. Counsel sought probation and asked the court not to adjudicate Wells as a habitual criminal. Counsel explained the circumstances regarding Wells' failures to appear and that the police report did not adequately reflect what happened regarding Wells' new charge. Wells failed to allege what additional advocacy counsel should have engaged in. Accordingly, Wells failed to demonstrate counsel's performance was deficient or a reasonable probability he would have received a more favorable sentence had counsel advocated differently. Therefore, we conclude the district court did not err by denying this claim.

Wells also sought the appointment of postconviction counsel below. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Because Wells appeared from the record to be indigent and his petition was a first petition not subject to summary dismissal, *see* NRS 34.745(1), (4), Wells met the



threshold requirements for the appointment of counsel. *See* NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 760-61. However, the district court found that the issues in this matter were not difficult, there was no indication that Wells was unable to comprehend the proceedings, and discovery with the aid of counsel was not necessary. For these reasons, the district court denied the motion to appoint counsel. The record supports the decision of the district court, and we conclude the district court did not abuse its discretion by denying the motion for the appointment of counsel. Nevertheless, in light of this court's disposition, the district court may decide to reconsider whether the appointment of counsel is warranted.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Tierra Danielle Jones, District Judge  
Chase Thomas Wells  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk