

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY POSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85903-COA

FILED

JUN 28 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Anthony Posey appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 28, 2022. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

In his petition, Posey claimed that his trial-level counsel was ineffective. To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). A petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). 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).

Posey claimed that his trial-level counsel was ineffective for instructing him to plead guilty to acts that were not a crime. Posey contended that he did not actually commit a crime because he did not know that the victim was under the age of 18 when he committed the offenses.

The father of the 15-year-old victim discovered information on the victim's phone that caused him to believe that the victim was engaged in prostitution activities. He contacted the police, and the police subsequently discussed the information with the victim. The victim acknowledged that she had engaged in multiple acts of prostitution with Posey. The victim also stated that she told Posey she was a minor. The police later interviewed Posey. Posey confessed to contacting the victim for the purposes of prostitution via a social networking site, and he acknowledged that he paid the victim to engage in sexual acts with him. Posey also asserted his belief that the victim was 18 years old. The State charged Posey with four counts of luring children or mentally ill persons with use of technology with the intent to engage in sexual conduct (luring), four counts of statutory sexual seduction, and four counts of solicitation of a child for prostitution (solicitation).

Posey and the State subsequently reached a plea agreement in which Posey agreed to enter a guilty plea to one count of luring and one count of solicitation in exchange for dismissal of the additional counts in this matter and dismissal of a different criminal case. In the written plea agreement, Posey acknowledged that he understood that the State would have to prove the elements of the offenses if he proceeded to trial but that he believed that accepting the plea agreement and pleading guilty were in

his best interests. During the plea canvass, Posey asserted that he had reviewed the police reports and discussed potential defenses with his counsel. Posey also acknowledged at the plea canvass that one of the reasons he decided to plead guilty was because he was in fact guilty. In addition, at the plea canvass Posey acknowledged that he read the information, he understood the charges against him, and the allegations contained within the information were true and correct. The information alleged that Posey committed the offenses with a minor.

In light of the facts regarding the victim's age, her statement that she informed Posey she was a minor, the information concerning Posey's communication with the victim via social media, and Posey's admission that he solicited the victim to engage in prostitution, Posey did not demonstrate that counsel should have advised him to proceed to trial in order to present a defense that he had a mistaken belief that the victim was not a minor. *See Moore v. State*, 136 Nev. 620, 624, 475 P.3d 33, 37 (2020) ("Requiring the State to prove the defendant knew or should have known the child was under the age of 16, as [the defendant] urges us to do, would be at odds with Nevada's policy of protecting children."); *see also Glegola v. State*, 110 Nev. 344, 347-48, 871 P.2d 950, 952 (1994) ("[S]olicitation for prostitution is a general intent crime. A person commits the crime of solicitation for prostitution if the person offers, agrees, or arranges to provide sexual conduct for a fee."). Therefore, Posey failed to demonstrate his counsel's performance fell below an objective standard of reasonableness.

In addition, Posey received a substantial reduction in the number of charges through the plea-bargaining process as he agreed to plead guilty to only 2 counts instead of proceeding to trial on the originally

charged 12 counts. In consideration of the facts contained within the record regarding the offenses and the reduction in charges Posey received through the plea bargain, Posey fails to demonstrate a reasonable probability that he would have refused to plead guilty and would have insisted on proceeding to trial had counsel performed different actions. Therefore, we conclude that the district court did not err by denying the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Westbrook


_____, Sr.J.
Silver

cc: Hon. Joseph Hardy, Jr., District Judge
Anthony Posey
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹The Honorable Abbi Silver, Senior Justice, participated in the decision of this matter under a general order of assignment.