

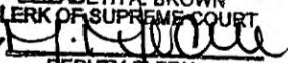
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STACIE LAOSHIE BOWERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86894-COA

FILED

MAY 16 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Stacie Laoshie Bowers appeals from orders of the district court dismissing in part and denying in part a postconviction petition for a writ of habeas corpus filed on October 11, 2021, and a supplemental petition filed on July 15, 2022. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Bowers argues the district court erred by denying her petition because the district court's findings are not supported by substantial evidence. 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). This court will not "evaluate the credibility of witnesses because that is the responsibility of the trier of fact." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

In her petition, Bowers first challenged the validity of her plea. "This court will not invalidate a plea as long as the totality of the circumstances, as shown by the record, demonstrates that the plea was knowingly and voluntarily made and that the defendant understood the nature of the offense and the consequences of the plea." *State v. Freese*, 116

Nev. 1097, 1105, 13 P.3d 442, 448 (2000). A guilty plea is presumptively valid, and a petitioner carries the burden of establishing the plea was not entered knowingly and intelligently. *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

Bowers alleged her plea was not entered knowingly and intelligently because she was under the influence of heroin at the time she entered her plea. Bowers alleged she was in a stupor, was not competent or coherent, and did not understand the sentencing consequences she faced. A guilty plea by a person under the influence of narcotics is not per se invalid. *Miller v. State*, 89 Nev. 561, 563, 517 P.2d 182, 182 (1973). Rather, “[t]he influence of narcotics must be such as to affect [their] competency to stand trial or [their] capacity to understand the nature and consequences of [their] plea.” *Id.* The burden is on the defendant to show by a preponderance of the evidence that she was so influenced. *Id.*

After conducting an evidentiary hearing on Bowers’ petition, the district court found (1) Bowers told the entry-of-plea court that she was not under the influence at the time she entered her plea; (2) she self-reported in her presentence investigation report that she never used heroin; and (3) counsel had the same information about the reason for Bowers’ drug test being positive for opiates as Bowers relayed to the court—that she had been prescribed “Tylenol 3” by a dentist and had taken it the day before the plea canvass. These findings are supported by the record. During the plea canvass, Bowers stated she “absolutely” was not under the influence of anything, was clearheaded, and understood what she was doing. Bowers indicated that she read and understood the plea agreement, including the rights she was giving up, and that counsel made no promises to her regarding her plea. Bowers also explained she understood the range of

punishment she faced and that the offense was eligible for probation but that the sentencing decision was up to the court.

At the evidentiary hearing, Bowers testified that she was on heroin at the time of the entry of her plea but offered no testimony or other evidence about how it affected her ability to understand the entry of plea proceedings other than stating she was in a “stupor,” “wasn’t myself,” and “wasn’t in my state of mind.” The district court found that Bowers’ testimony was not credible. Further, counsel testified that he had no indication Bowers was on heroin or that she seemed under the influence at the time she entered her plea.

In light of these circumstances, Bowers failed to demonstrate by a preponderance of the evidence that she was on heroin at the time she entered her plea or that her alleged drug use impacted her ability to understand the nature and consequences of her plea. Having considered the totality of the circumstances, we conclude Bowers did not overcome the presumption that her guilty plea was valid. Therefore, we conclude the district court did not err by denying this claim.

In her petition, Bowers also alleged claims of ineffective assistance of counsel. 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), and the

petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

First, Bowers claimed counsel was ineffective for telling her she would receive probation. At the evidentiary hearing, Bowers testified that she knew at the time she entered her plea that she faced up to 15 years in prison, but counsel assured her she would get probation. Counsel testified that he neither promised Bowers that she would receive probation nor assured her that she had a good chance at probation. The district court found counsel's testimony credible and implicitly found Bowers' testimony not credible. The district court also found that there was overwhelming evidence pointing to Bowers' guilt, and Bowers does not dispute this finding on appeal. Finally, the district court found that Bowers received a "favorable deal" by pleading guilty. This finding is supported by the record. Counsel testified that Bowers faced trial on multiple felonies and that he "was concerned with the amount of felonies" and the strength of the evidence against Bowers. Thus, Bowers received a substantial benefit by entering her plea.

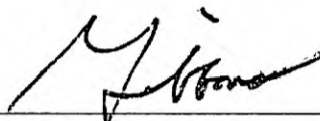
In light of these circumstances, Bowers failed to demonstrate counsel's performance was objectively unreasonable or a reasonable probability she would not have pleaded guilty and would have insisted on going to trial but for counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Second, Bowers claimed counsel was ineffective for failing to explain to her that the Division of Parole and Probation (Division) would evaluate her history and develop a probation success probability (PSP) score that could result in denial of probation. She further claimed that had she

known that her PSI score of 26 “equated to a denial of probation,” she would have moved to withdraw her plea.

At the evidentiary hearing, counsel testified that he explained to Bowers that the Division would make a sentencing recommendation in the presentence investigation report (PSI) but it was ultimately up to the court to decide what sentence to impose. Counsel further testified that he never told Bowers the Division’s recommendation would either ensure or prevent her from getting probation and that Bowers never expressed to counsel she believed the Division’s recommendation would ensure or prevent her from getting probation. Counsel also testified that the evidence against Bowers was overwhelming, it was Bowers’ desire to have a chance at probation, and she agreed to plead guilty in exchange for that opportunity. The district court found counsel’s testimony was credible. In addition, as discussed above, Bowers received a substantial benefit for entering her plea. In light of these circumstances, Bowers failed to demonstrate counsel’s performance was objectively unreasonable or a reasonable probability she would have sought withdrawal of her plea and would have insisted on going to trial but for counsel’s alleged errors. Therefore, we conclude the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Egan K. Walker, District Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk