IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHELLE ANTWANETTE PAET,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87058

FILED
JUN 11 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Appellant Michelle Antwanette Paet filed the instant postconviction petition for a writ of habeas corpus on May 29, 2018, more than one year after issuance of the remittitur on direct appeal. *See Paet v. State*, No. 70037, 2016 WL 7322786 (Nev. Dec. 15, 2016) (Order of Affirmance). Thus, the petition was untimely filed. NRS 34.726(1). Paet's petition was procedurally barred absent a demonstration of good cause—that the delay was not Paet's fault and that dismissal because the petition is untimely would be unduly prejudicial. *See id.* The district court held an evidentiary hearing and found that the delay was not Paet's fault. Nevertheless, the court denied the petition, concluding that Paet did not demonstrate prejudice.

Paet argues that the district court erred in concluding that she failed to demonstrate prejudice to overcome the procedural bar.[1] In

[1]Although the State challenges the first part of the district court's good cause determination (fault for the delay), we need not reach that issue and therefore express no opinion as to whether Paet demonstrated that the delay was not her fault.

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particular, Paet claims that her guilty plea was invalid because of the ineffective assistance of counsel. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that if 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 *Strickland* test). 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 687, 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). We defer 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).

Paet argues that she was not aware of the consequences of the guilty plea and the rights relinquished with it. Paet further contends that she entered the plea under duress because counsel did not communicate with her, was not prepared for trial, and frightened Paet by telling her about a woman who had been executed in another state for a similar crime. We conclude that this argument lacks merit.

The district court found that Paet acknowledged, both in the guilty plea agreement and the plea canvass, the rights she waived by

entering the guilty plea and the consequences of the guilty plea. Additionally, Paet acknowledged in both the guilty plea agreement and canvass that counsel explained the consequences of the guilty plea and waiver of rights and Paet was satisfied with counsel's explanation. These findings are supported by the record. Additionally, the record, including trial counsel's testimony at the evidentiary hearing, supports the district court's findings that counsel communicated routinely with Paet about the case, conveyed information about discovery, actively litigated the case, and was prepared to proceed to trial before Paet decided to plead guilty. Lastly, Paet averred in the guilty plea agreement and at the plea canvass that she had not been coerced or threatened to enter a guilty plea. *See Rubio v. State*, 124 Nev. 1032, 1038, 194 P.3d 1224, 1228 (2008) (stating that "a defendant may generally not repudiate [their] assertions, made in open court, that the plea is voluntary"). Given the totality of the circumstances, Paet did not demonstrate that counsel performed deficiently or that Paet would not have pleaded guilty but for counsel's performance. Accordingly, we conclude the district court did not err by denying the petition and

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Cadish

_____, J.
Lee

_____, J.
Bell

cc: Hon. Tierra Danielle Jones, District Judge
Oronoz & Ericsson, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk