

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EMILY IKUTA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 87688-COA

**FILED**

SEP 10 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Emily Ikuta appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on July 26, 2023. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Ikuta contends the district court erred by denying her 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.<sup>1</sup> *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). We give

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<sup>1</sup>We note Ikuta entered a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), which is the equivalent to a guilty plea insofar as how the court treats a defendant. *State v. Lewis*, 124 Nev. 132, 133 n.1, 178 P.3d 146, 147 n.1 (2008), *overruled on other grounds by State v. Harris*, 131 Nev. 551, 556, 355 P.3d 791, 793-94 (2015).

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). A petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Ikuta claimed counsel was ineffective for failing to investigate a neighbor's voluntary statement to the police. Ikuta claimed the statement contained the plural pronoun "we" instead of the singular pronoun "I," which suggested that more than one witness heard something from her apartment at the time the crime was committed.

A petitioner alleging counsel should have conducted a better investigation must specify what the results of a better investigation would have been and how it would have affected the outcome of the proceedings. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Ikuta contended that an investigation would have led "to seeing search and seizure facts not factual and PSI" and that counsel's failure to investigate created a "false sense of the facts." Ikuta did not clearly identify what the results of an investigation would have been, nor did she specify why there was a reasonable probability she would not have entered her plea had counsel investigated the statement. Therefore, Ikuta failed to allege specific facts indicating counsel was deficient or a reasonable probability she would not have pleaded guilty and would have insisted on going to trial but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim.

Ikuta also claimed counsel was ineffective for failing to impeach a witness at the preliminary hearing. Ikuta contended the witness's testimony was "only his version of events" and that some of the witness's testimony was hearsay and/or misrepresented the facts. Ikuta did not specify what testimony counsel should have impeached or what testimony constituted hearsay and/or misrepresented the facts. To the extent Ikuta claimed counsel should have impeached the witness with the fact that the witness had admitted in a statement to police that it was hard for him to recall when he heard certain noises, the witness testified to this difficulty during his direct examination. Ikuta also did not specify why there was a reasonable probability she would not have entered her plea had counsel impeached this witness. Therefore, Ikuta failed to allege specific facts indicating counsel was deficient or a reasonable probability she would not have pleaded guilty and would have insisted on going to trial but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim.

Ikuta also claimed counsel was ineffective for failing to object to prosecutorial misconduct. Specifically, Ikuta contended that detectives informed witnesses during interviews that they were conducting a murder investigation. Ikuta's claim did not implicate any prosecutorial conduct, improper or otherwise. *See Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008) (stating that, in considering a claim of prosecutorial misconduct, the first step is to "determine whether the *prosecutor's* conduct was improper" (emphasis added)). To the extent Ikuta's claim could be construed as a prosecutorial misconduct claim, it is not clear that it is improper for a detective to inform a witness of the purpose of their investigation. Further, Ikuta did not allege that she would not have entered

her plea but for counsel's failure to object to this alleged misconduct. Therefore, Ikuta failed to allege specific facts indicating counsel was deficient or a reasonable probability she would not have pleaded guilty and would have insisted on going to trial but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim.

Ikuta's last claim regarding counsel's alleged ineffectiveness was that counsel failed to file a motion to suppress her statement to the police because the police failed to properly advise her of her *Miranda*<sup>2</sup> rights or coerced her statement and waiver of rights. Ikuta contended that the interrogation was coercive because she was "infused with a sense of helplessness, stress, [and] grief," she was sleep deprived, she had anxiety, and she was physically ill. Ikuta also contended that her freedom of movement was curtailed because officers watched her for approximately six hours and told her to stay at a neighbor's home.

A petitioner claiming ineffective assistance of counsel for failure to file a motion to suppress must demonstrate that the motion would have been meritorious. *Kirksey*, 112 Nev. at 990, 923 P.2d at 1109. "A valid waiver of rights under *Miranda* must be voluntary, knowing, and intelligent. A waiver is voluntary if, under the totality of the circumstances, the [statement] was the product of a free and deliberate choice rather than coercion or improper inducement." *Mendoza v. State*, 122 Nev. 267, 276, 130 P.3d 176, 181-82 (2006) (internal quotation marks omitted).

Ikuta's claim that she was not advised of her *Miranda* rights is belied by the record, which indicates Ikuta was advised of, and waived, her rights. Moreover, Ikuta's claim that officers curtailed her freedom of

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<sup>2</sup>*Miranda v. Arizona*, 384 U.S. 436 (1966).

movement does not concern the circumstances in which Ikuta provided her statement to the police. A detective met Ikuta at her neighbor's home and asked her if she would be willing to be interviewed at police headquarters, and Ikuta agreed. Ikuta's claim that officers watched her for approximately six hours prior to this interaction does not indicate that her subsequent decision to waive her *Miranda* rights and make a statement was coerced or improperly induced. And Ikuta did not allege that the police caused or induced her grief, sleep deprivation, anxiety, or physical illness or that these ailments were the result of physical or psychological intimidation.<sup>3</sup> Therefore, Ikuta failed to allege specific facts indicating a motion to suppress her statement to the police would have been meritorious or that counsel was deficient for failing to file such a motion. Accordingly, we conclude the district court did not err by denying this claim.

In her petition, Ikuta also raised independent claims that (1) the police did not advise her of her *Miranda* rights and took her statement in violation of her constitutional rights, (2) the State withheld exculpatory evidence, (3) the police tainted the interviews with witnesses and allowed bad act evidence, (4) the prosecutors failed to investigate or withheld the fact that two witnesses lived together, and (5) the evidence was insufficient to sustain her conviction. These claims did not allege that Ikuta's plea was involuntarily or unknowingly entered or that the plea was entered without the effective assistance of counsel; thus, they fell outside the scope of claims permissible in a postconviction habeas petition stemming from a guilty plea.

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<sup>3</sup>We note that Ikuta's interview with the police was 44 minutes long. To the extent Ikuta advised detectives that she was physically ill by asking to use the bathroom during the interview, the detectives allowed her to use the bathroom and informed her that if she had "[a]ny more emergencies, just let us know," to which Ikuta replied "Okay. Thank you though."

See NRS 34.810(1)(a); see also *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by *Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999). Therefore, we conclude the district court did not err by denying these claims.

Ikuta also challenged the validity of her plea. After sentencing, a district court may permit a petitioner to withdraw their guilty plea where necessary “[t]o correct manifest injustice.” NRS 176.165; see *Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014) (stating NRS 176.165 “sets forth the standard for reviewing a post-conviction claim challenging the validity of a guilty plea”). “[T]his court will not overturn the district court’s determination on manifest injustice absent a clear showing of an abuse of discretion . . . .” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1229 (2008) (internal quotation marks omitted).

First, Ikuta claimed she did not enter her plea voluntarily or knowingly because she was “without knowledge of the elements.” “[G]uilty pleas are presumptively valid,” and the petitioner “bears a heavy burden when challenging the validity of a guilty plea.” *State v. Huebler*, 128 Nev. 192, 203, 275 P.3d 91, 98 (2012). “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).

Ikuta’s bare claim is belied by the record. Ikuta was originally charged with murder with the use of a deadly weapon and subsequently pleaded to second-degree murder. Ikuta acknowledged in the written plea agreement that she had discussed the elements of both offenses with counsel, counsel “thoroughly explained” the elements to her, and she

understood the nature of the charges against her. In her petition, Ikuta did not specify what elements she did not understand or how she did not understand them. Although Ikuta claimed she did not understand the elements because the State withheld exculpatory evidence, Ikuta did not explain how the alleged withholding of evidence affected her understanding of the elements of the offenses. Therefore, Ikuta failed to allege specific facts that were not belied by the record and that, if true, would demonstrate she could overcome the presumption of her plea's validity. Accordingly, Ikuta failed to demonstrate withdrawal of her plea was necessary to correct a manifest injustice, and we conclude the district court did not abuse its discretion by denying this claim.

Second, Ikuta appears to have claimed that she did not enter her plea voluntarily or knowingly because the State withheld exculpatory evidence. As previously discussed, an independent claim that the State committed a *Brady*<sup>4</sup> violation by withholding exculpatory evidence is outside the scope of claims permissible in a postconviction petition for a writ of habeas corpus stemming from a guilty plea. However, "a defendant may challenge the validity of a guilty plea based on the prosecution's failure to disclose material exculpatory information before entry of the plea." *Huebler*, 128 Nev. at 200, 275 P.3d at 96-97.

Ikuta contended that (1) the State could have "measured [her] elbow" to "see if this matched [the] trajectory of [the] bullet" and that doing so would have shown she was "too short" to have shot the victim; (2) a "gunshot residue kit was not conducted" and this evidence would have shown gunshot residue on the victim and a "lack of [gunshot residue] on

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<sup>4</sup>*Brady v. Maryland*, 373 U.S. 83 (1963).

[her] matching medical aid given to [the] victim common where [gunshot residue] would show on a person giving medical aid”; (3) a “closer inspection” of the firearm would have shown that the victim’s skin was “on [the] slide of the gun that matches” an injury on the victim’s left pinky; (4) the State withheld GPS location data located on her phone and social media accounts that would have proven her alibi that she was out walking her dog and not in the apartment when the victim was shot; and (5) the State withheld the doorbell camera settings associated with a neighbor’s doorbell camera that would have shown “anyone walking the same path along [the] pool would not show up on camera.”

As an initial matter, we note that Ikuta’s first four allegations do not identify any evidence that was suppressed by the State in violation of *Brady*. The first three allegations did not identify any exculpatory evidence that the State possessed and failed to disclose. Regarding Ikuta’s fourth allegation, Ikuta knew or should have known whether any GPS location data contained on her phone would have shown that her phone was not at the scene of the crime when the victim was shot. *See Rippo v. State*, 113 Nev. 1239, 1257, 946 P.2d 1017, 1028 (1997) (stating “a *Brady* violation does not result if the defendant, exercising reasonable diligence, could have obtained the information”).

Nonetheless, even assuming the State withheld all five categories of evidence alleged by Ikuta, Ikuta still had to allege specific facts indicating this evidence was “material,” *i.e.*, that “there is a reasonable probability that but for the failure to disclose the *Brady* material, [she]



would have refused to plead and would have gone to trial.”<sup>5</sup> *Huebler*, 128 Nev. at 203, 275 P.3d at 98 (quotation marks omitted). This court considers several factors in determining whether evidence is material, including, but not limited to:

- (1) the relative strength and weakness of the State’s case and the defendant’s case; (2) the persuasiveness of the withheld evidence; (3) the reasons, if any, expressed by the defendant for choosing to plead guilty; (4) the benefits obtained by the defendant in exchange for the plea; and (5) the thoroughness of the plea colloquy.”

*Id.* at 204, 275 P.3d at 99.

After review, we conclude that Ikuta failed to allege specific facts indicating there was a reasonable probability that she would have refused to plead and would have gone to trial but for the alleged failure to disclose *Brady* material. First, there was substantial evidence of Ikuta’s guilt at the time Ikuta entered her plea. Ikuta informed detectives that she was out walking the dog at the time the victim—her husband—was shot, that she found the victim face down on the floor when she returned home, and that she quickly noticed something was wrong, called 9-1-1, and administered medical aid. Ikuta also informed detectives that she walked the dog for approximately 30 minutes, and a declaration of warrant/summons indicates she called 9-1-1 at 11:02 p.m. Although Ikuta claimed she did not know how the shooting occurred, she told detectives that the victim may have shot himself while cleaning his gun. Ikuta

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<sup>5</sup>Ikuta did not allege that she had specifically requested any of the allegedly withheld evidence. *See Huebler*, 128 Nev. at 203, 275 P.3d at 98-99 (recognizing a different materiality test applies when the defendant specifically requests the allegedly withheld evidence).

informed detectives that she saw the firearm next to the victim's body, she picked it up, and she put it in a closet and locked the door "out of habit."

The State obtained voluntary statements from several individuals who were playing an online game with the victim immediately prior to the shooting. These individuals stated that (1) they were on an online group call with the victim; (2) they heard the victim's dog barking in the background of the call; (3) the victim stepped away from his computer to address his barking dog; and (4) they heard a loud sound, and the victim never returned to the call. Detectives also obtained a statement from a neighbor indicating that, between 10:40 p.m. and 10:50 p.m., they heard a distressed female voice, a male voice, and a "thud," which was "very unusual" because they "never hear anything."

Ikuta did not inform officers at the scene that she had found and moved the firearm; rather, officers discovered the firearm while conducting a protective sweep of the home. Officers also observed that gun cleaning materials were on a shelving unit, but none were placed out for use. A muzzle impression on the victim's body indicated that the firearm had been pushed into the victim's abdomen. Finally, the declaration of warrant/summons indicates the police could not corroborate Ikuta's claim that she was out walking the dog because (1) a neighbor's doorbell camera with proximity motion activation did not show anyone coming to or fleeing from the area during the time of the shooting, and (2) a neighbor informed detectives that Ikuta usually walked her dog between 4:00 p.m. and 7:00 p.m. and they had never seen Ikuta walk her dog late at night.

Second, none of the allegedly withheld evidence is particularly persuasive. The evidence indicated that the firearm had been pressed into the victim's abdomen; thus, it is unclear how a measurement of Ikuta's

elbow would have indicated she was “too short” to have shot the victim or would have exculpated Ikuta based on the bullet’s trajectory. Moreover, it is unclear how gunshot residue on the victim and a “lack of [gunshot residue] on [Ikuta] matching medical aid given to [the] victim” would indicate Ikuta did not shoot the victim. Regarding Ikuta’s claim that the victim injured his pinky by manipulating the slide of the firearm, such an injury is not a clear indication that Ikuta did not shoot the victim. Regarding the doorbell camera settings, even if the settings were as Ikuta claimed, this evidence would not indicate that Ikuta was walking her dog at the time of the shooting nor would it indicate that Ikuta was not in the apartment with the victim when he was shot. Finally, even assuming the State collected GPS location data indicating where Ikuta’s phone was located during the crime, the State obtained substantial evidence indicating Ikuta was not walking her dog at the time the victim was shot but was in the apartment. In addition, the fact that Ikuta entered her plea when she knew or should have known that such data existed suggests Ikuta did not view this evidence as material to her decision to enter her plea.

As to factors three and four from *Huebler*, in the guilty plea agreement, Ikuta affirmed that she entered her *Alford* plea in order to avoid the possibility of being convicted of a greater offense and of receiving a greater penalty. As previously stated, Ikuta was initially charged with murder with the use of a deadly weapon and could have received a maximum prison sentence of life without the possibility of parole and a consecutive prison term of 8 to 20 years. See NRS 193.165(1); NRS 200.030(4). However, because Ikuta pleaded to second-degree murder, the parties stipulated to, and the district court imposed, a single sentence of 10 to 25 years in prison.

In light of the foregoing,<sup>6</sup> Ikuta failed to allege specific facts indicating the withheld evidence was material or that her plea was not voluntarily or intelligently entered because the State withheld exculpatory evidence. Accordingly, Ikuta failed to demonstrate withdrawal of her plea was necessary to correct a manifest injustice, and we conclude the district court did not abuse its discretion by denying this claim.

For the reasons previously discussed, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Jacqueline M. Bluth, District Judge  
Emily Ikuta  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>6</sup>We note that the plea canvass transcript is not included in the record on appeal.