


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GEOVANI BALTADANO,
Appellant,
vs.
GABRIELA NAJERA, WARDEN; AND
THE STATE OF NEVADA,
Respondents.

No. 87820-COA

FILED

DEC 24 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Geovani Baltadano appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on February 2, 2023. Eighth Judicial District Court, Clark County; Bita Yeager, Judge.

Baltadano argues the district court erred by denying his 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*). Both components of the inquiry—deficiency and prejudice—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 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, Baltadano claimed trial counsel was ineffective for failing to present mitigating evidence at sentencing.¹ The district court conducted an evidentiary hearing on Baltadano's petition where Baltadano, his mother, and trial counsel testified. Baltadano testified that his addiction to oxycodone started when he broke his jaw at age 21—approximately nine years prior to the 11 robberies he committed, some with the use of weapons. He explained that he committed the robberies to get more oxycodone. No medical records were offered in support of Baltadano's petition. Baltadano testified that, after he was arrested, he wrote an apology letter. Baltadano explained that he did not remember what was in the letter but remembered

¹Baltadano contends trial counsel should have presented the following evidence at sentencing: (1) testimony or letters from Baltadano's mother, his long-time friend, and his boss, who would have painted a life-long picture of Baltadano to demonstrate the offenses were outside of his character and the result of his drug addiction; (2) an apology letter Baltadano wrote to the victims to demonstrate his acceptance of responsibility, guilt, remorse and empathy for the victims; (3) a summary of Baltadano's pretrial incarceration to demonstrate his "pristine disciplinary history, his respect for jail officials and his positive adjustment;" (4) argument regarding the lack of victim participation in the sentencing process to show a less severe sentence was warranted based on the idea that his crimes had a diminished impact on the victims; (5) argument regarding the low amount of restitution to show Baltadano's lack of criminal sophistication and motivation; and (6) medical records depicting Baltadano's broken jaw and prescription for oxycodone to show the origin of his drug addiction.

“apologizing that my intentions were never to hurt anyone” and that his intentions were instead “just to get my next fix.” The letter was not offered in support of Baltadano’s petition, and trial counsel was not asked about the letter at the evidentiary hearing. Baltadano’s mother testified that she would have told the judge about Baltadano’s life and that he was a good person and was sorry for what he had done to the victims.

The district court found that: (1) the sentencing court noted at the beginning of the sentencing hearing that Baltadano had been accepted into drug court and that the court was thus aware of his drug addiction; (2) trial counsel emphasized that Baltadano had no criminal history and his crimes were completely due to his drug addiction, and (3) Baltadano had completed a substance abuse program while in jail. These findings are supported by the record. In addition, the presentence investigation report (PSI) provided that Baltadano alleged his addiction to oxycodone started after he broke his jaw at age 21. The PSI further provided that he committed the offenses to support his drug addiction, and the State recounted as much during its sentencing argument. And Baltadano told the sentencing court “[w]hen I look back now to the man who committed those crimes, I don’t know who that man is or even was. I was lost in a major pill addiction. I was an addict.” The duplicative nature of the evidence Baltadano presented in support of his petition regarding his out-of-character commission of crimes due to his drug addiction does not support his argument that the evidence would result in a reasonable probability of a different outcome in his sentence. *Cf. Cullen v. Pinholster*, 563 U.S. 170, 200 (2011) (concluding that there was no reasonable probability that “new”

mitigation evidence would have changed the jury's verdict regarding a sentence of death, in part because "[t]he 'new' evidence largely duplicated the mitigation evidence at trial").


With regard to Baltadano's disciplinary record at the jail, Baltadano offered only his testimony at the evidentiary hearing, and he acknowledged that he had "write-ups" while in custody but no new cases or acts of violence. As to the victims' lack of participation in the process and the low restitution amounts, those facts were clear from the record, and Baltadano does not allege, nor does the record show, that the sentencing court did not consider these facts. Further, trial counsel was not asked at the evidentiary hearing why he did not argue these points. Baltadano's apology letter was not introduced at the evidentiary hearing, and Baltadano's recollection of the contents of the letter concerned his drug addiction and remorse. The drug addiction aspect of the letter would have been, as discussed above, duplicative of other evidence introduced at sentencing. And we conclude the remorseful aspect of the letter would have been duplicative of counsel's multiple arguments that Baltadano was "completely remorseful;" we also note the sentencing court commented on the fact that Baltadano had shown remorse before imposing sentence. In light of the above, we conclude Baltadano failed to demonstrate counsel was deficient or a reasonable probability of a different outcome. Therefore, we conclude the district court did not err by denying this claim.

Second, Baltadano claimed trial counsel was ineffective for failing to object to the restitution amounts recommended in the PSI and to demand that the State prove the actual amount owed. Other than

Baltadano's evidentiary hearing testimony alleging that the restitution amounts were "totally different," Baltadano offered no evidence regarding the correct restitution amounts. Thus, Baltadano failed to prove by a preponderance of the evidence that the restitution amounts were inaccurate. Accordingly, Baltadano failed to demonstrate a reasonable probability of a lower restitution amount had counsel challenged the restitution amounts. Therefore, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Bitu Yeager, District Judge
The Law Office of Kristina Wildeveld & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk