

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICOLE JUSTINA DATTKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88052-COA

FILED

JAN 31 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

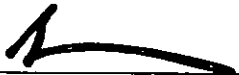
Nicole Justina Dattke appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on July 27, 2021, and a supplemental petition filed on January 10, 2023. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Dattke argues the district court erred by denying her claim that counsel was ineffective for failing to investigate without first conducting an evidentiary hearing. 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). 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). To warrant an evidentiary hearing, 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).

In her petition and supplement, Dattke alleged counsel was ineffective for failing to investigate a witness and to discover another witness, both of whom would have provided exculpatory evidence. We conclude that Dattke supported her claim with specific facts that were not belied by the record and, if true, would entitle her to relief. Thus, the district court erred by denying this claim without conducting an evidentiary hearing.¹ Therefore, we reverse the district court's order and remand to the district court to conduct an evidentiary hearing on this claim. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

¹We note that the district court relied solely on the facts recited in the presentence investigation report (PSI) when denying Dattke's petition. However, the PSI contained at least one error, as stipulated to by the parties, and Dattke disputed other facts contained in the PSI.

cc: Hon. Kathleen M. Drakulich, District Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk