


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

QUIWANECA SPIKES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88744-COA

FILED

FEB 10 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Quiwaneca Spikes appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on February 22, 2024. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Spikes argues the district court erred by denying her claims of ineffective assistance of counsel.¹ 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*). 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

¹Spikes was represented by multiple attorneys at the trial level. Of those, she appeared to allege only the ineffective assistance of Thomas Wells, Esq. and Steven Altig, Esq.

have insisted on going to trial.² *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry—deficiency and prejudice—must be shown. *Strickland*, 466 U.S. at 687. 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 on a claim, 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).

First, Spikes claimed that Altig was ineffective with regard to a scheduled sentencing hearing. Spikes did not appear for the hearing, and a bench warrant was issued. Spikes alleged that Altig gave her the wrong Blue Jeans code and made false representations to the court at the hearing regarding her absence. The record reflects that the parties agreed to stipulate to probation and flat jail time. The State later regained the right to argue for any legal sentence, and Spikes was ultimately sentenced to 1-6 years in prison. We conclude that Spikes’ claim was not belied by the record, and if true, may entitle Spikes to relief. Accordingly, we conclude Spikes was entitled to an evidentiary hearing on this claim. *See id.* Therefore, we reverse the district court’s decision as to this claim and remand this matter to the district court to conduct an evidentiary hearing on this claim.

²We note Spikes 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).

Second, Spikes claimed that Altig was ineffective for failing to correct errors in the presentence investigation report (PSI), including errors related to Spikes' criminal record. Spikes appeared to allege that she received a different sentence as a result of the errors. We conclude that Spikes' claim was not belied by the record, and if true, may entitle Spikes to relief. Accordingly, we conclude Spikes was entitled to an evidentiary hearing on this claim. *See id.* Therefore, we reverse the district court's decision as to this claim and remand this matter to the district court to conduct an evidentiary hearing on this claim.

Third, Spikes claimed that Wells was ineffective for threatening her with incarceration if she did not enter an *Alford* plea. Spikes failed to allege that counsel's advice was objectively unreasonable or that any deficiency affected her decision to enter her *Alford* plea. Further, the candid advice of counsel regarding the consequences of proceeding to trial versus accepting a plea deal does not constitute a threat. *Cf. Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015) (stating "undue coercion occurs when a defendant is induced by promises or threats which deprive the plea of the nature of a voluntary act" (internal quotation marks omitted)); *see also Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 69, 412 P.3d 56, 62 (2018) (noting that one of the roles of an attorney is to provide candid advice to their client). Accordingly, Spikes failed to demonstrate counsel was deficient or a reasonable probability she would not have entered her plea and would have insisted on going to trial but for counsel's alleged error. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Spikes claimed that Wells was ineffective for failing to investigate or consider exculpatory evidence and for wasting time by assisting in the competency proceedings. Spikes' bare claims failed to

explain how counsel's alleged deficiencies affected her decision to enter her *Alford* plea. Accordingly, Spikes failed to demonstrate counsel was deficient or a reasonable probability she would not have entered 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 these claims.

Fifth, Spikes claimed that both Wells and Altig were ineffective for violating her First Amendment rights. Spikes' bare claim failed to explain how counsels' alleged deficiencies affected her decision to enter her *Alford* plea. Accordingly, Spikes failed to demonstrate counsel were deficient or a reasonable probability she would not have entered her plea and would have insisted on going to trial but for counsels' alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Spikes also claimed that: (1) the trial court judge was biased; (2) she was improperly denied a bail hearing; and (3) her sentence amounts to cruel and unusual punishment. These claims were waived because they could have been raised on direct appeal. *See 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). Further, these claims did not challenge the validity of Spikes' *Alford* plea or allege that Spikes entered her plea without the effective assistance of counsel. Accordingly, they were outside the scope of claims permissible in a postconviction petition for a writ of habeas corpus challenging a judgment of conviction based on an *Alford* plea. *See* NRS 34.810(1)(a). For these reasons, we conclude that the district court did not err in denying these claims.

Spikes also argues the district court erred by denying her motion to disqualify the postconviction judge because the judge was biased

against her. In support of her claim, Spikes alleged that the judge: (1) imposed a cruel and unusual sentence; (2) sentenced Spikes with a false PSI; (3) imposed restitution when there was no injury or damage; (4) ignored Spikes' request for an attorney; (4) disregarded what Spikes told the judge about Spikes' situation; and (5) lied to Spikes about being released from custody after a hearing on October 16, 2023.


Spikes has not demonstrated that the district court was biased against her because she has not shown the district court's decisions were based on knowledge acquired outside of the proceedings, and the decisions do not otherwise reflect "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Canarelli v. Eighth Jud. Dist. Ct.*, 138 Nev. 104, 107, 506 P.3d 334, 337 (2022) (internal quotation marks omitted) (explaining that, unless an alleged bias has its origins in an extrajudicial source, disqualification is unwarranted absent a showing that the judge formed an opinion based on facts introduced during official judicial proceedings and which reflects deep-seated favoritism or antagonism that would render fair judgment impossible); *see In re Petition to Recall Dunleavy*, 104 Nev. 784, 789, 769 P.2d 1271, 1275 (1988) (providing that rulings made during official judicial proceedings generally "do not establish legally cognizable grounds for disqualification"); *see also Rivero v. Rivero*, 125 Nev. 410, 439, 216 P.3d 213, 233 (2009) (stating that the burden is on the party asserting bias to establish sufficient factual grounds for disqualification), *overruled on other grounds by Romano v. Romano*, 138 Nev. 1, 6, 501 P.3d 980, 984 (2022), *abrogated in part on other grounds by Killebrew v. State ex rel. Donohue*, 139 Nev., Adv. Op. 43, 535 P.3d 1167 (2023). Further, the record reflects that the court informed Spikes at the October 16, 2023, hearing that her attorney could file a motion for her

release, if appropriate—not that Spikes would be released. In light of these circumstances, we conclude Spikes is not entitled to relief based on this claim.

Based on the above, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.³


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

³To the extent Spikes attempts to support the claims raised in her pleadings below by adding facts or argument on appeal, we decline to consider these facts or argument for the first time on appeal. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

We have considered all documents Spikes has filed in this matter and conclude no further relief based upon those documents is warranted. Insofar as Spikes has raised other issues which are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Mary Kay Holthus, District Judge
Quiwaneca Nicole Spikes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk