IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOANNE DEBERNARDO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89427-COA

ORDER OF AFFIRMANCE

Joanne Debernardo appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 20, 2024. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Debernardo argues the district court erred by denying her claim that counsel were ineffective.[1] 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

[1]Debernardo pleaded guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). An *Alford* plea is equivalent to a guilty plea insofar as how the court treats a defendant. *See 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). 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).

First, Debernardo claimed counsel were ineffective for advising her to plead guilty when she was mentally ill and innocent. This court previously rejected Debernardo's claim that her plea was not knowingly and voluntarily entered based on her mental health issues. *See Debernardo v. State*, Docket No. 86272-COA, 2024 WL 205987 (Nev. Ct. App. January 18, 2024) (Order of Affirmance). Because this court already determined her plea was knowingly and voluntarily entered and was not affected by her mental health issues, Debernardo failed to demonstrate counsel were deficient for advising her to take a plea despite her mental health issues. As to Debernardo's claim that counsel should not have advised her to plead guilty because she was innocent, counsel demonstrated they knew the evidence against Debernardo and the potential weaknesses of the State's case. Counsel filed a motion for bail reduction and iterated the facts of the case against Debernardo. Because Debernardo relied on those same facts to demonstrate she is innocent, she failed to demonstrate counsel did not understand her claim of innocence when advising her about the plea agreement. Counsel is not deficient for giving candid advice about the potential outcomes of pleading guilty or going to trial. *Cf. Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 69, 412 P.3d 56, 62 (2018). Therefore, we

conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.[2]

Second, Debernardo claimed counsel were ineffective for failing to investigate.[3] Specifically, she claimed counsel should have investigated whether the crime scene analyst swabbed the victim's genitals for DNA. She claimed that, had counsel investigated this, the lack of her DNA on the victim's genital area would be exculpatory because an eyewitness told police that he saw Debernardo on top of the victim and that it *appeared* she was having sex with the victim. Given the eyewitness's testimony, the exculpatory value of the DNA test would have been minimal. Further, given that counsel knew about the eyewitness's testimony and the other evidence against Debernardo, Debernardo fails to demonstrate a reasonable probability she would not have pleaded guilty and would have insisted on going to trial had counsel investigated this alleged DNA evidence. *See Hill*, 474 U.S. at 59 (stating that, in guilty plea cases, whether a defendant is

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[2]Debernardo argues the district court erred by denying two of her claims as procedurally barred. The district court found that her claims challenged the sufficiency of the evidence and were not properly raised in a postconviction petition for a writ of habeas corpus. Debernardo argues her claims were raised as ineffective assistance of counsel claims. We agree that Debernardo raised her claims under the guise of ineffective assistance of counsel. Because the district court also reviewed these claims as ineffective assistance of counsel claims, we conclude Debernardo is not entitled to relief on this claim.

[3]On appeal, Debernardo argues counsel should have investigated her other pending cases, questioned the witnesses' conflicting statements, interviewed the eyewitness's girlfriend, and obtained neighborhood camera footage from the night of the murder. Debernardo did not make these arguments below; therefore, we decline to consider them for the first time on appeal. *State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

prejudiced by counsel's failure to investigate potentially exculpatory evidence "will depend on the likelihood that discovery of the evidence would have led counsel to change [the] recommendation as to the plea," which itself will depend in large part on "whether the evidence likely would have changed the outcome of a trial"). Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.[4]

Third, Debernardo claimed the cumulative errors of counsel entitled her to relief. Even if multiple instances of deficient performance could be cumulated for purposes of demonstrating prejudice, *see McConnell v. State*, 125 Nev. 243, 259 & n.17, 212 P.3d 307, 318 & n.17 (2009), Debernardo failed to demonstrate multiple errors to cumulate, *see Burnside v. State*, 131 Nev. 371, 407, 352 P.3d 627, 651 (2015) (stating a claim of cumulative error requires multiple errors to cumulate). Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Next, Debernardo argues generally that the district court erred by denying her presentence motion to withdraw her guilty plea. Debernardo challenged the denial of her presentence motion to withdraw her guilty plea on direct appeal, and this court affirmed the denial of the motion. *See Debernardo*, Docket No. 86272-COA, 2024 WL 205987. Thus, this claim was barred by the doctrine of law of the case. *Hall v. State*, 91

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[4]On appeal, Debernardo argues counsel were ineffective for failing to inform her that the eyewitness discussed above recanted his statement to the police. This claim was not raised below, and we decline to consider it for the first time on appeal. *Wade*, 105 Nev. at 209 n.3, 772 P.2d at 1293 n.3.

Nev. 314, 315, 535 P.2d 797, 798 (1975). Therefore, Debernardo is not entitled to relief on this claim.

Next, Debernardo argues the district court created a conflict of interest by allowing her counsel to testify against her at the hearing regarding the presentence motion to withdraw her guilty plea and by eliciting medical testimony from her counsel even though counsel were not medical experts. Because these claims could have been raised on direct appeal, they were waived. *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999). Therefore, Debernardo is not entitled to relief on these claims.

Finally, Debernardo argues the district court erred by denying her petition in chambers rather than at a hearing and by not considering her opposition to the State's response to her petition. Debernardo fails to demonstrate the district court was required to hold a hearing on her petition. Debernardo also fails to demonstrate she filed a timely opposition to the State's response to her petition. The record on appeal does not contain an opposition or a motion to file an opposition. Therefore, we conclude that Debernardo fails to demonstrate that the district court erred or that she was entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Tierra Danielle Jones, District Judge
Joanne Carol Debernardo
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk