

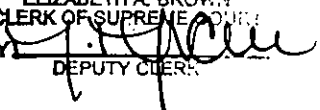
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

COLETTE PATRICE DESPAIN,
Appellant,
vs.
NDOC FMWCC WARDEN AND THE
STATE OF NEVADA,
Respondents.

No. 89409-COA

FILED

JUN 16 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Colette Patrice DeSpain appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on March 21, 2024. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

DeSpain filed her petition more than two years after entry of the judgment of conviction on February 11, 2022.¹ Thus, DeSpain's petition was untimely filed. *See* NRS 34.726(1). DeSpain's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* “In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules.” *Hathaway v. State*, 119 Nev. 248, 252 71 P.3d 503, 506 (2003). “An impediment external to the defense may be demonstrated by a showing that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials, made compliance impracticable.” *Id.* (internal quotation marks omitted).

¹DeSpain did not appeal from her judgment of conviction.

In her petition, DeSpain claimed she had good cause to overcome the procedural time bar because she was granted two enlargements of time to file her petition. DeSpain's first motion for enlargement of time requested an extension because she had been in the hospital for the first six months of the one-year time limit for filing a petition and she had no access to the law library or the courts. The second motion requested an extension so DeSpain could receive evidentiary items. The district court granted both of the extensions, and DeSpain filed her petition within the time extensions.

The application of the procedural bars is mandatory, *see State v. Eighth Jud. Dist. Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005), and "a stipulation by the parties cannot empower a court to disregard the mandatory procedural default rules," *State v. Haberstroh*, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003). Additionally, the one-year timeline in NRS 34.726(1) has been strictly construed. *See Gonzales v. State*, 118 Nev. 590, 593-96, 53 P.3d 901, 902-04 (2002) (concluding a petition filed days after the one-year deadline was untimely). Here, however, the district court's actions in granting DeSpain's motions for enlargement of time and in explicitly extending—even if erroneously—the filing deadline interfered with the timely filing of DeSpain's petition. We conclude that DeSpain's reliance on these extensions was reasonable and implicated official interference. Therefore, we conclude DeSpain demonstrated cause for the delay.

As stated above, DeSpain was also required to demonstrate undue prejudice. "A showing of undue prejudice necessarily implicates the merits of the . . . claim[s]" raised in the petition. *Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018).

First, DeSpain claimed counsel was ineffective for failing to secure the “attorney-client privilege,” failing to ensure her access to the courts, and failing to ensure she had a proper bail hearing.² 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, the 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, 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).

These claims were outside the scope of a postconviction petition for a writ of habeas corpus challenging a judgment of conviction entered pursuant to a guilty plea. See NRS 34.810(1)(a). Even if the claims could

²To the extent DeSpain claimed that her attorney-client privilege was not respected, that her access to the courts was limited, and that she did not have a proper bail hearing, these claims were waived as 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).

be construed as within the scope, DeSpain failed to allege that, had counsel done these things, she would not have pleaded guilty and would have insisted on going to trial. Therefore, we conclude DeSpain failed to demonstrate undue prejudice to overcome the procedural time bar with respect to these claims.

Second, DeSpain claimed counsel was ineffective for failing to investigate and secure testing to show that she was sober the night of the accident. She claimed that, had counsel done this investigation, the district court would have imposed the lesser sentence recommended by the State of 5 to 20 years in prison.

While the sentencing court mentioned there was no evidence that DeSpain was sober the night of the accident, the court did not base its sentence on this lack of evidence. Instead, the sentencing court was concerned with DeSpain's behavior after the accident—she did not stop immediately; she knew she had been in an accident but did not report it until the next day; she reported the accident to her insurance before reporting the accident to the police; and she gave a story to the police that made no sense, minimized her involvement, and attempted to blame the victim. Thus, even assuming evidence existed to demonstrate DeSpain was sober the night of the incident, we conclude DeSpain failed to demonstrate a reasonable probability of a different outcome at sentencing had counsel sought testing regarding her sobriety. Therefore, Despain failed to demonstrate undue prejudice to overcome the procedural time bar.

Third, DeSpain claimed counsel was ineffective for failing to file an appeal. DeSpain failed to support this claim with specific facts that, if true, would entitle her to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Specifically, she failed to allege that she asked

counsel to file an appeal or that she expressed dissatisfaction with her sentence to counsel. *See Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011) (stating that “trial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with [her] conviction”). Therefore, DeSpain failed to demonstrate undue prejudice to overcome the procedural time bar.

Fourth, DeSpain claimed that the cumulative errors of counsel would entitle 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), DeSpain 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, Despain failed to demonstrate undue prejudice to overcome the procedural time bar.

Finally, DeSpain claimed she did not enter her plea voluntarily and knowingly because she did not understand, and counsel did not explain, that the district court could impose a longer sentence than the one recommended in the plea agreement. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), *superseded by statute on other grounds as stated in Hart v. State*, 116 Nev. 558, 1 P.3d 969 (2000); *see also Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). In determining the validity of a guilty plea, this court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); *Bryant*, 102 Nev. at


271. 721 P.2d at 367. When raising a postconviction claim challenging the validity of a guilty plea, the petitioner must demonstrate a manifest injustice. *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 postconviction claim challenging the validity of a guilty plea”). “A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel. Manifest injustice may also be demonstrated by a failure to adequately inform a defendant of the consequences of [her] plea.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228-29 (2008) (footnote and internal quotation marks omitted).


In the plea agreement, the parties agreed that the State would recommend no more than 5 to 20 years in prison. However, the plea agreement also informed DeSpain that the sentencing range was 2 to 20 years and the minimum could not be more than 40 percent of the maximum. The plea agreement also stated that “I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the court within the limits prescribed by statute.” At the change of plea hearing, DeSpain stated that she received a copy of the guilty plea agreement, read it, and understood it. She also stated that counsel discussed the guilty plea agreement, explained it to her, and answered her questions. She was also expressly asked whether she understood that “sentencing is solely up to the court and no one can promise you probation, leniency, or any special treatment?” DeSpain indicated that she understood and again affirmed she understood that the sentencing range was 2 to 20 years in prison. Given the totality of the circumstances, we conclude DeSpain failed to demonstrate that her plea was not knowingly


and voluntarily entered or that counsel was ineffective. Thus, DeSpain failed to demonstrate undue prejudice to overcome the procedural time bar.

Therefore, we conclude that DeSpain's petition was procedurally barred, and we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Christy L. Craig, District Judge
Colette Patrice Despain
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³The district court construed DeSpain's postconviction habeas petition as a motion to modify sentence. We conclude this was error because DeSpain filed a postconviction petition for a writ of habeas corpus and, as discussed above, raised several claims appropriate for that type of petition. Nevertheless, we affirm the district court's order because it reached the correct result. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).