IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEITH KNOTEK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88575-COA

FILED

JUL 30 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Keith Knotek appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on July 27, 2023. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Knotek argues the district court erred by denying his petition without conducting an evidentiary hearing. In his petition, he claimed he should be entitled to withdraw his plea because it was not knowingly and voluntarily entered. A district court may permit a petitioner to withdraw their guilty plea after sentencing where necessary "[t]o correct manifest injustice." NRS 176.165; *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 post-conviction claim challenging the validity of a guilty plea"). "The district court may grant a post-conviction motion to withdraw a guilty plea that was not entered knowingly and voluntarily in order to correct a manifest injustice." *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008). "[T]his court will not overturn the district court's determination on manifest injustice absent a clear showing of an abuse of

discretion." *Id.* at 1039, 194 P.3d at 1229 (internal quotation marks omitted). 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 his petition, Knotek claimed his plea was not knowingly and voluntarily entered due to the ineffective assistance of counsel. "A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel." *Rubio*, 124 Nev. at 1039, 194 P.3d at 1228. 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 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).

First, Knotek claimed counsel was ineffective for failing to object to the negotiated charge of battery with the use of a deadly weapon causing substantial bodily harm or to advise Knotek about the improper nature of the charge. Knotek alleged he was improperly charged with this crime because it must be committed willfully and he lacked the intent to strike the victim's vehicle. Battery is defined as "any willful and unlawful use of force or violence upon the person of another." NRS 200.481(1)(a).

The amended information alleged Knotek willfully and unlawfully committed the offense by driving his vehicle into the rear of the victim's vehicle. This offense was added to the amended information to achieve a negotiated resolution agreed to by Knotek. The guilty plea agreement provided that Knotek understood that by pleading guilty he was admitting the facts that supported all elements of the offense. Further, the agreement stated that Knotek had discussed the elements of the original charges against him with his attorney including all possible defenses to the charges, and facts and circumstances that might be favorable to him. Additionally, the agreement notified him that the State would have to prove all the elements of each charge at trial. Counsel certified in the plea agreement that he had fully explained to Knotek the allegations and charges to which Knotek was pleading guilty.

The district court found Knotek was originally charged with two counts of driving under the influence (DUI) causing substantial bodily harm and two counts of reckless driving causing substantial bodily harm, and thus the possible sentence Knotek faced pursuant to his plea deal "was significantly better than the possible sentence he faced under the original

charges." These findings are supported by the record. Further, the court found that even if the battery offense was considered a fictitious charge, the guilty plea was still valid. In light of these circumstances, Knotek failed to demonstrate counsel's performance was deficient or a reasonable probability that Knotek would not have pleaded guilty and would have insisted on going to trial but for counsel's inaction. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Knotek claimed counsel was ineffective for failing to challenge the charge of DUI, third offense or to advise Knotek about consequences of the charge because Knotek lacked two prior DUI convictions. Similar to the battery charge, Knotek entered a guilty plea to this fictitious charge. Further, he was questioned during the hearing for his change of plea about this DUI charge. Knotek, who was under oath, represented he understood the charge was fictitious in that he did not have two prior DUI convictions and agreed to waive any defects in the record in order to receive the benefit of the plea deal—the possibility of a less severe prison sentence. Further, Knotek stated he understood that if he got a subsequent DUI, it would be treated as a felony and agreed to waive any defects with respect to that. In light of these circumstances, Knotek failed to demonstrate counsel's performance was deficient or a reasonable probability that Knotek would not have pleaded guilty and would have insisted on going to trial but for counsel's inaction. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Knotek claimed counsel was ineffective for failing to research and argue for a sentence proportional to defendants who committed similar offenses. Knotek alleged counsel should have presented the sentencing court with the factual circumstances of six unrelated cases where the victims were killed instead of being merely seriously injured. Based on those cases, Knotek alleged he was prejudiced because his sentence amounted to cruel and unusual punishment as it was "disproportionately severe and unusual" in comparison to those cases.

Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

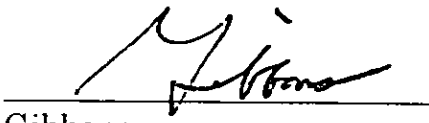
The aggregated sentence imposed of 92 to 232 months in prison is within the parameters provided by the relevant statutes. *See* 2017 Nev. Stat., ch. 59, § 2, at 230 (former NRS 200.481(2)(e)(2)); 2015 Nev. Stat., ch. 312, § 27, at 1579 (NRS 484B.653(6)); 2017 Nev. Stat., ch. 484, § 11.5, at 3029 (former NRS 484C.400(1)(c)). Knotek did not allege those statutes are unconstitutional nor demonstrate the sentence imposed was grossly disproportionate to the crimes. And we reject his argument regarding

proportionality and purportedly similarly situated defendants, as the Eighth Amendment does not require strict proportionality. *See Harmelin*, 501 U.S. at 1000-01. Thus, Knotek failed to show that his sentence constituted cruel and unusual punishment, that counsel's performance was deficient for failing to present this argument to the sentencing court, or that there was a reasonable probability of a different result but for counsel's inaction. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Finally, Knotek claimed the cumulative errors of counsel entitled him 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), Knotek failed to demonstrate any errors to cumulate. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing. Because Knotek failed to demonstrate ineffective assistance of counsel, he failed to demonstrate he was entitled to relief on his claim that his plea was not knowingly and voluntarily entered and thus failed to demonstrate withdrawal of his plea was necessary to correct a manifest injustice. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Bulla



_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Robert W. Lane, District Judge
Law Office of Christopher R. Oram
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk