

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AB'DUL CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89657-COA

FILED

OCT - 8 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY all Gomes
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ab'dul Castro appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 11, 2018, and a supplemental petition filed on August 7, 2022. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

In his petition, Castro asserted, among other things, that trial counsel was ineffective at sentencing for failing to request that the sentencing court reduce his sentence pursuant to NRS 176.017(2). The district court initially denied Castro's petition without conducting an evidentiary hearing on any of the claims raised therein. On appeal from that prior decision, this court reversed the denial of Castro's sentencing claim and remanded the matter for an evidentiary hearing. *See Castro v. State*, No. 86585-COA, 2024 WL 1269857 (Nev. Ct. App. Mar. 25, 2024) (Order of Remand). On remand, and after conducting an evidentiary hearing, the district court again denied Castro's petition. Castro claims the district court erred by denying his remaining claim of ineffective assistance of counsel at sentencing.

To demonstrate ineffective assistance of counsel at sentencing, 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*). Both components of the inquiry—deficiency and prejudice—must be shown, *Strickland*, 466 U.S. at 687, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). 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).

Castro's claim against trial counsel centers on NRS 176.017. At the time of the underlying offenses in this case, Castro was 16 years old. Pursuant to NRS 176.017(1), if a person is convicted as an adult for an offense committed while the person was a juvenile, the sentencing court "shall consider the differences between juvenile and adult offenders, including, without limitation, the diminished culpability of juveniles as compared to that of adults and the typical characteristics of youth." Once the court has undertaken this consideration, NRS 176.017(2) provides the court "*may, in its discretion*, reduce any mandatory minimum period of incarceration that the person is required to serve by not more than 35 percent if the court determines that such a reduction is warranted given the age of the person and his or her prospects for rehabilitation." (Emphasis added.)

The district court found that, while trial counsel may not have expressly invoked NRS 176.017, the record demonstrated the sentencing


court had ample evidence to inform its NRS 176.017(1) consideration because the sentencing memorandum and trial counsel's arguments at the sentencing hearing "focused on [Castro's] youth, . . . the immaturity and impetuosity of youth, the high susceptibility to peer pressure, and the lack of frontal lobe development at that stage of adolescence." Thus, the district court concluded trial counsel, while not aware of the statute, "addressed many of the factors" in NRS 176.017(1). The record supports the district court's findings. At the post-remand evidentiary hearing, trial counsel testified he was not familiar with NRS 176.017 at the time he was representing Castro in late 2017. However, trial counsel testified he filed a sentencing memorandum one month prior to the sentencing hearing in which he argued the sentencing court should impose a low-end aggregate sentence of 5-15 years considering Castro's youth at the time of the offense and academic treatises and scientific research regarding adolescent development and reduced culpability.

As to NRS 176.017(2), the district court found that Castro failed to demonstrate there was a reasonable probability the sentencing court would have reduced Castro's sentence had trial counsel requested the sentencing court do so pursuant to NRS 176.017(2). The district court reasoned that trial counsel requested the sentencing court impose a sentence of 5-15 years, which represented the mandatory definite sentence for first-degree kidnapping without substantial bodily harm pursuant to NRS 200.320(2)(b) along with concurrent sentences on the other counts, but the sentencing court, "while aware of the factors encapsulated in NRS 176.[017(1)], sentenced petitioner to nearly double that amount." Given that the sentencing court was aware of the sizable reduction of charges pursuant to the guilty plea agreement, Castro's prior juvenile history, and

Castro's youth, the district court found it was "not reasonably probable that the sentencing court would have further reduced the sentence imposed" pursuant to its discretionary authority under NRS 176.017(2). The record also supports this finding. Thus, even if trial counsel's failure to expressly request a sentencing reduction pursuant to NRS 176.017(2) was deficient performance, Castro has not demonstrated a reasonable probability of a different outcome absent that deficiency. We therefore

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Hon. Carolyn Ellsworth, Senior Judge
Hon. Tara D. Clark Newberry, District Judge
Nevada State Public Defender's Office
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk