IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FLOYD PRICE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90542-COA

ORDER OF AFFIRMANCE

Floyd Price appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on August 24, 2023, and a supplemental petition filed on February 23, 2024. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.[1]

First, Price argues counsel was ineffective for coercing his *Alford*[2] plea. Specifically, he claimed counsel coerced him into entering an *Alford* plea by promising him he would get drug court and by pressuring his family members to talk him into taking the plea deal. He also claimed counsel told him to lie when answering the district court's questions during

[1]Hon. Tierra Danielle Jones heard the evidentiary hearing and signed the previous order denying Price's petition. This court dismissed Price's previous appeal because the order entered by the district court did not constitute a final order. *See Price v. State*, No. 88870-COA, 2025 WL 782320 (Nev. Ct. App. March 11, 2025) (Order Dismissing Appeal). Hon. Tara D. Clark Newberry signed the instant order denying Price's petition.

[2]*North Carolina v. Alford*, 400 U.S. 25 (1970). We note that an *Alford* plea 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).

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the plea canvass. 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), 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).

At the evidentiary hearing, counsel testified that she explained the possible consequences of taking the plea deal or going to trial. Specifically, she explained to Price and his family that, if he was convicted at trial, there was no opportunity for probation or drug court. Further, counsel testified she did not promise Price he would get probation and drug court in this case. She also testified she did not tell Price to lie during the plea canvass. Price's family members testified at the evidentiary hearing. They said counsel told them that Price would not receive drug court if he did not plead pursuant to the plea deal. Further, they testified counsel informed them that, if Price did plead pursuant to the plea deal, he could get drug court. Price testified that counsel promised him he would get drug court and told him, through body language and words, to lie during the plea

canvass. The district court found that counsel was credible, that counsel did not promise Price drug court, and that counsel did not coerce Price into entering an *Alford* plea. The district court then denied the petition.

The findings of the district court are supported by the record, and this court will not "evaluate the credibility of witnesses because that is the responsibility of the trier of fact." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). In light of the foregoing, Price failed to demonstrate counsel coerced him into entering his *Alford* plea and he failed to demonstrate counsel's performance was deficient or a reasonable probability he would not have pleaded guilty. Therefore, we conclude the district court did not err by denying this claim.

Second, Price argues his plea was not knowingly and voluntarily entered because counsel coerced his plea with the promise of receiving drug court. A district court may permit a petitioner to withdraw their 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"). "A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel." *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008). We review a district court's determination on manifest injustice for a clear abuse of discretion. *See id.* at 1039, 194 P.3d at 1229.

In addition to the findings above regarding counsel's performance, the district court found Price was properly canvassed regarding the terms of the plea agreement, including that the State was free to argue for an appropriate sentence. The district court further found that,

at the change of plea hearing, Price acknowledged he was not promised a particular sentence. The district court also found that Price acknowledged in the plea agreement he was not coerced into entering his plea. These findings are sufficient and supported by the record, and we conclude the district court did not abuse its discretion by determining that Price 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. Tara D. Clark Newberry, District Judge
Steven S. Owens
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk