

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MELODIE PINNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90298-COA

FILED

FEB 27 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Melodie Pinner appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on August 5, 2024, and supplement. Eleventh Judicial District Court, Mineral County; Bryce Shields, Judge.

Pinner was convicted, pursuant to a guilty plea, of obtaining and using personal identifying information of another, possession of a controlled substance, and uttering a forged instrument. In the instant petition and supplement, Pinner claimed counsel was ineffective and that her plea was not knowingly or intelligently entered. The State filed a motion to dismiss the petition and supplement, which the district court granted.

On appeal, Pinner contends the district court erred by dismissing her claims of ineffective assistance of counsel without conducting an evidentiary hearing. 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). 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 her petition and supplement, Pinner claimed counsel was ineffective for failing to file a direct appeal. The district court dismissed this claim pursuant to NRS 34.810(1)(a), which states that a postconviction habeas petition challenging a judgment of conviction entered pursuant to a guilty plea must be “based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.” On appeal, the parties jointly contend, and we agree, that the district court erred by dismissing this claim pursuant to NRS 34.810(1)(a).¹ See *Gonzales v. State*, 137 Nev. 398, 403, 492 P.3d 556,

¹To the extent Pinner claimed the trial-level court mishandled her direct appeal, we conclude the district court properly dismissed this claim pursuant to NRS 34.810(1)(a).

562 (2021) (stating “[t]he core claims prohibited by NRS 34.810(1)(a) are independent claims relating to the deprivation of constitutional rights that occurred *prior to the entry of the guilty plea*” (internal quotation marks omitted) (emphasis added)); *see generally Toston v. State*, 127 Nev. 971, 267 P.3d 795 (2011) (considering the merits of an appeal-deprivation claim even though the appellant’s judgment of conviction was entered pursuant to a guilty plea).

Furthermore, we conclude Pinner is entitled to an evidentiary hearing on this claim. Pinner alleged that (1) counsel did not discuss her right to an appeal with her and did not inquire if she desired to appeal; (2) counsel had reason to know she was dissatisfied with her convictions because she had previously asked counsel to withdraw her guilty plea; and (3) she had attempted to contact counsel after sentencing to request an appeal but was unable to directly communicate with counsel. These allegations are not belied by the record and, if true, would entitle Pinner to relief. *See Toston*, 127 Nev. at 978, 267 P.3d at 800 (stating “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 his conviction”); *see also Lozada v. State*, 110 Nev. 349, 357, 871 P.2d 944, 949 (1994) (providing that, when a petitioner has been deprived of the right to appeal due to counsel’s deficient performance, prejudice is presumed), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 P.3d 1084 (2018). Accordingly, we reverse the district court’s decision as to this claim and remand this matter to the district court to conduct an evidentiary hearing on this claim.

Second, Pinner claimed counsel was ineffective for failing to raise certain arguments at sentencing. In particular, Pinner appeared to

contend counsel should have argued (1) the State verbally agreed to recommend probation and treatment in exchange for her testimony in her codefendant's case, and (2) "the district attorney lied to the court" by stating Pinner had "already got the benefits of [her] plea in another case." The district court dismissed these claims as outside the scope of claims permissible in a postconviction habeas petition pursuant to NRS 34.810(1)(a).

The guilty plea agreement indicated that the State was free to argue at sentencing and that Pinner was not acting "by virtue of any promises of leniency, except for those set forth in this agreement." Thus, the State did not breach the plea agreement in recommending a prison sentence on each of the counts charged.² In light of this record, Pinner failed to allege specific facts indicating objectively reasonable counsel would have argued the State was limited in its sentencing recommendation. *See Chappell v. State*, 137 Nev. 780, 788, 501 P.3d 935, 950 (2021) (stating "a petitioner must do more than baldly assert that his attorney could have, or should have, acted differently" and "must *specifically explain* how his attorney's performance was objectively unreasonable" (quotation marks omitted)). Moreover, Pinner's claim that the State asserted she had received the benefits of her plea "in another case" is belied by the record; the State merely asserted that "she got a lesser sentence because she agreed" to testify against her codefendant and that she had already "gotten the benefit of that agreement." Further, Pinner failed to allege specific facts

²The State recommended a sentence of 4 to 10 years in prison on Count I (obtaining and using personal identifying information of another), a consecutive sentence of 19 to 48 months in prison on Count II (possession of a controlled substance, low level), and a concurrent sentence of 12 to 32 months in prison on Count III (uttering a forged instrument).

indicating a reasonable probability of a different outcome at sentencing had counsel raised these arguments. Therefore, we conclude the district court did not err in dismissing this claim without conducting an evidentiary hearing.³

Third, Pinner claimed counsel was ineffective in advising her to sign the plea agreement. In particular, Pinner appeared to contend counsel advised her that the phrase “free to argue” in the plea agreement meant the State would recommend probation or treatment. Even assuming counsel performed deficiently, the record indicates Pinner understood that the phrase “free to argue” meant the State could argue for a prison sentence at the time she entered her guilty plea. At the plea canvass, the trial-level court informed Pinner that the State was free to argue at sentencing and specifically asked Pinner what “free to argue” meant, and Pinner stated “FTA, free to argue, for probationary [sic] up until the maximum sentence of one to 20.”⁴ In light of this record, Pinner failed to allege specific facts indicating a reasonable probability she would not have pleaded guilty and would have insisted on going to trial but for counsel’s purported error.⁵

³The district court erred to the extent it dismissed this claim pursuant to NRS 34.810(1)(a). *See Gonzales*, 137 Nev. at 404, 492 P.3d at 562. Nonetheless, because the district court reached the correct result, we affirm the dismissal of this claim. *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 was based on the wrong reason).

⁴We note that Pinner’s conviction for obtaining and using personal identifying information of another was punishable “by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years.” NRS 205.463(1).

⁵Pinner asserted she would have insisted on going to trial had she “not believed in good faith that the State would recommend treatment.”

Accordingly, we conclude the district court did not err in dismissing this claim without conducting an evidentiary hearing.

Fourth, Pinner appeared to claim counsel was ineffective for not responding to her request to withdraw her plea. She contended that she sent letters to counsel requesting that he file a motion to withdraw her plea and that counsel did not communicate with her until the day of sentencing.

Pinner's bare claim did not specify what arguments would have been presented in such a motion. However, Pinner independently claimed that her plea was not knowingly and intelligently entered because she did not understand that the phrase "free to argue" meant the State could argue for a prison sentence. To the extent this claim would have formed the basis for such a motion, Pinner's claim was belied by the record as she explicitly acknowledged at the plea canvass that the phrase "free to argue" meant the State could argue for a sentence other than probation. Therefore, Pinner failed to allege specific facts indicating there was a fair and just reason for withdrawing her plea, *see Stevenson v. State*, 131 Nev. 598, 603, 354 P.3d 1277, 1281 (2015) (discussing the standard applicable to presentence motions to withdraw a plea), and thus, that there was a reasonable probability of a different outcome had counsel filed a presentence motion to withdraw her plea. Accordingly, we conclude the district court did not err in dismissing this claim without conducting an evidentiary hearing.⁶

However, Pinner's subjective assertion is not dispositive of the prejudice inquiry. *See Lee v. United States*, 582 U.S. 357, 369 (2017) ("Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies.").

⁶The district court erred to the extent it dismissed this claim pursuant to NRS 34.810(1)(a). *See Gonzales*, 137 Nev. at 404, 492 P.3d at 562. Nonetheless, because the district court reached the correct result, we affirm

For this same reason, we further conclude Pinner did not allege specific facts indicating withdrawal of her plea was necessary to correct a manifest injustice and, thus, the district court did not err in dismissing Pinner's independent challenge to the validity of her guilty plea.⁷ See *Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014) (discussing the legal standard applicable to a postconviction claim challenging the validity of a guilty plea); see also *Molina v. State*, 120 Nev. 185, 191, 87 P.3d 533, 537-38 (2004) ("A thorough plea canvass coupled with a detailed, consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently." (quotation marks omitted)).

Fifth, Pinner claimed counsel was ineffective for failing to "call the district attorney on lies" regarding the restitution to be paid and whether she received a lesser sentence. Pinner's bare claim failed to specify why objectively reasonable counsel would have raised such arguments or why there was a reasonable probability of a different outcome had such arguments been raised. See *Chappell*, 137 Nev. at 788, 501 P.3d at 950.

the dismissal of this claim. See *Wyatt*, 86 Nev. at 298, 468 P.2d at 341 (holding a correct result will not be reversed simply because it was based on the wrong reason).

⁷To the extent Pinner argues on appeal that the record does not belie her claim that counsel and the district attorney met with her "at the time she proffered her testimony" and that they represented to her that the State would not oppose a sentence encompassing treatment, such claims are insufficient to demonstrate a manifest injustice occurred where the record indicates Pinner understood the State could argue for a sentence other than probation at the time she entered her plea and that she was not acting "by virtue of any promises of leniency" in entering her plea.

Accordingly, we conclude the district court did not err in dismissing this claim without conducting an evidentiary hearing.⁸

Sixth, Pinner claimed counsel was ineffective for failing to present adequate mitigating evidence at sentencing.⁹ In particular, Pinner contended counsel failed to present adequate evidence that (1) she was sexually assaulted by a staff nurse while incarcerated in Oregon; (2) she assisted in the prosecution of her abuser without any promise of benefit and despite high cost to herself; and (3) she was denied confidentiality and experienced inappropriate comments and sexual harassment from male deputies while detained at the Mineral County Jail.

The record indicates counsel presented evidence at sentencing that Pinner was the victim of a sexual assault while incarcerated in Oregon and that Pinner informed the court during her allocution that she needed to testify in her abuser's criminal case and that doing so caused her to relapse. Pinner did not allege specific facts indicating objectively reasonable counsel would have presented additional evidence on these subjects or that there was a reasonable probability of a different outcome

⁸The district court erred to the extent it dismissed this claim pursuant to NRS 34.810(1)(a). *See Gonzales*, 137 Nev. at 404, 492 P.3d at 562. Nonetheless, because the district court reached the correct result, we affirm the dismissal of this claim. *See Wyatt*, 86 Nev. at 298, 468 P.2d at 341 (holding a correct result will not be reversed simply because it was based on the wrong reason).

⁹To the extent Pinner also claimed that the trial-level court abused its discretion at sentencing and that her sentence constitutes cruel and unusual punishment, we conclude the district court properly dismissed these claims pursuant to NRS 34.810(1)(a).

had counsel done so.¹⁰ And although Pinner's experiences in the Mineral County Jail were not brought up during sentencing, Pinner did not allege that she informed counsel of these experiences prior to sentencing or specific facts indicating a reasonable probability of a different outcome at sentencing had counsel presented evidence that she had been denied confidentiality or sexually harassed while in jail. Accordingly, we conclude the district court did not err in dismissing this claim without conducting an evidentiary hearing.¹¹

Seventh, Pinner claimed the cumulative errors of counsel warranted 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), Pinner failed to demonstrate counsel's alleged errors, considered cumulatively, would have entitled her to relief, *see Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000) (stating the relevant factors to consider in evaluating a claim of cumulative error). Therefore, we conclude the district court did not err in dismissing this claim.

¹⁰Contrary to Pinner's claim, the fact that Nevada permits a district court to reduce or suspend the sentence of a person convicted of certain crimes not at issue here if they have rendered substantial assistance in the investigation or prosecution of any offense does not indicate there is a reasonable probability the district court would have imposed a lesser sentence had additional evidence of Pinner's assistance been proffered. *See* NRS 453.3405(2).

¹¹The district court erred to the extent it dismissed this claim pursuant to NRS 34.810(1)(a). *See Gonzales*, 137 Nev. at 404, 492 P.3d at 562. Nonetheless, because the district court reached the correct result, we affirm the dismissal of this claim. *See Wyatt*, 86 Nev. at 298, 468 P.2d at 341 (holding a correct result will not be reversed simply because it was based on the wrong reason).

Having considered Pinner's claims and concluded the district court erred in dismissing Pinner's appeal-deprivation claim but properly dismissed Pinner's remaining claims, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Bryce Shields, District Judge
Angeley Law PLLC
Attorney General/Carson City
Mineral County District Attorney
Clerk of the Court/Court Administrator