

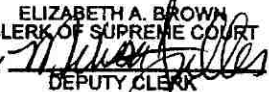
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KIMBERLY MARIE WARTH A/K/A
KIMBERLY MARIE BELLINGAR,
Appellant,
vs.
NDOC WARDEN W. REUBART AND
THE STATE OF NEVADA,
Respondents.

No. 91433-COA

FILED

MAR 23 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Kimberly Marie Warth appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 25, 2025. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

The district court denied Warth's petition as procedurally time barred because it found the petition was filed 1 year and 18 days after Warth's judgment of conviction was filed on June 7, 2024. Warth's petition was due June 7, 2025, *see* NRS 34.726(1) (stating a petitioner has one year from the entry of the judgment of conviction or from the issuance of remitter on direct appeal to file a timely postconviction petition for a writ of habeas corpus); however, June 7, 2025, was a Saturday. Thus, Warth had until June 9, 2025, the following Monday, to timely file her petition. *See* NRCP 6(a)(1)(C); *see also* NRS 34.780(1) (stating that the Nevada Rules of Civil Procedure apply to proceedings for postconviction petitions for a writ of habeas corpus to the extent they are not inconsistent with NRS Chapter 34). Warth mailed her petition to the Las Vegas Justice Court, rather than the district court, and it was received on June 9, 2025, the last day for Warth

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to timely file her petition. The petition was ultimately transferred and stamped received by the Eighth Judicial District Court clerk on June 11, 2025.

We conclude the district court erred by finding the petition was untimely filed. *Cf.* NRS 34.738(2) (providing that a postconviction habeas petition sent to an incorrect county must be transferred to the clerk of the appropriate county and must be deemed filed on the date it was received by the clerk of the incorrect county); NRAP 4(e) (stating a notice of appeal mistakenly filed in the Nevada Supreme Court must be sent to the district court clerk and must be considered filed in the district court on the date it was received by the supreme court). Notwithstanding its conclusion that the petition was untimely filed, the district court also considered the merits of the claims raised in Warth's petition.¹ We affirm the district court's denial of the petition, as outlined below.

In her petition, Warth argued counsel was ineffective.² 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

¹The district court considered the merits of Warth's claims to conclude she had not demonstrated prejudice to overcome the procedural time bar. *See* NRS 34.726(1).

²To the extent Warth raised new claims and facts in her reply to the State's response below and in her informal brief on appeal, we decline to consider them on appeal because they were not considered by the district court. *Cf. Barnhart v. State*, 122 Nev. 301, 303, 130 P.3d 650, 651 (2006) ("Generally, the only issues that should be considered by the district court at an evidentiary hearing on a post-conviction habeas petition are those which have been pleaded in the petition or a supplemental petition and those to which the State has had an opportunity to respond.").

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). 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).

First, Warth claimed counsel was ineffective for failing to allow her to face her accuser. Warth's bare claim failed to specify how counsel was supposed to "allow" this, particularly where Warth pleaded guilty. Thus, Warth failed to allege specific facts indicating counsel's performance was deficient. Further, Warth failed to allege she would not have pleaded guilty and would have insisted on going to trial but for counsel's alleged error. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Warth claimed counsel was ineffective for failing to challenge the evidence presented at the grand jury proceedings. Warth's bare claim failed to state specifically what counsel should have challenged or what document counsel should have filed to challenge the proceedings. Thus, Warth failed to allege specific facts indicating counsel's performance was deficient. Further, Warth failed to allege she would not have pleaded

guilty and would have insisted on going to trial but for counsel's alleged error. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Warth claimed counsel was ineffective for failing to investigate videos, pictures, online conversations, and testimony that severe abuse occurred toward Warth by the victim. Warth's bare claim failed to explain the contents of these videos, pictures, online conversations, and testimony. Thus, Warth failed to allege specific facts indicating counsel's performance was deficient. Further, Warth failed to allege she would not have pleaded guilty and would have insisted on going to trial but for counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fourth, Warth claimed counsel was ineffective for failing to explain to her how court proceedings worked and failing to communicate with her while she was incarcerated. Warth's bare claim failed to specify what court proceedings she did not understand. Further, she failed to allege what information she was unable to communicate to counsel based on her incarceration. Thus, Warth failed to allege specific facts indicating counsel's performance was deficient. Further, Warth failed to allege she would not have pleaded guilty and would have insisted on going to trial but for counsel's errors. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fifth, Warth claimed counsel was ineffective for failing to speak with her after sentencing and that she did not know what a direct appeal was. Warth's bare claim failed to allege facts indicating counsel had a duty to inform her of a direct appeal. The duty to inform a defendant who pleaded guilty about the right to appeal only arises when the defendant

inquires about the right to appeal or when the defendant may receive a benefit from receiving such advice. *Toston v. State*, 127 Nev. 971, 977, 267 P.3d 795, 799 (2011). Warth did not allege that she inquired about an appeal or that she would have benefited from advice regarding a direct appeal.³ Therefore, Warth failed to allege specific facts indicating counsel's performance was deficient, and we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Next, Warth claimed the State committed misconduct at the grand jury proceedings by failing to present evidence favorable to her. Specifically, she contended the State failed to produce ballistics and forensics; the State failed to produce evidence that was favorable to the defense; and the prosecutor suppressed favorable evidence. This claim was outside the scope of claims permissible to be raised in a postconviction petition for a writ of habeas corpus stemming from a guilty plea. *See* NRS 34.810(1)(a) (stating such a petition may only allege "that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel"). Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Finally, Warth claimed the State withheld *Brady*⁴ material. While a defendant may challenge the validity of a guilty plea based on the prosecution's failure to disclose material exculpatory information before entry of the plea, *see State v. Huebler*, 128 Nev. 192, 200, 275 P.3d 91, 96-

³We note Warth was informed of her right to a direct appeal in her guilty plea agreement.

⁴*Brady v. Maryland*, 373 U.S. 83 (1963).

97 (2012), Warth's bare claim failed to allege what material exculpatory evidence was withheld. Thus, she failed to support this claim with specific facts not belied by the record that, if true, would entitle her to relief. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Having concluded Warth is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Tierra Danielle Jones, Chief Judge
Kimberly Marie Warth
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk