

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
KEAIR JAMAL BOYD,
Respondent.

No. 89407-COA

FILED

JUN 02 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Melissa Hall*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

The State of Nevada appeals from a district court order partially granting a postconviction petition for a writ of habeas corpus filed by respondent Keair Jamal Boyd on May 27, 2020.¹ Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

Boyd was charged with first-degree kidnapping, sex trafficking, extortion, and three counts of sexual assault. The maximum sentencing exposure for those charges was 43 years to life in prison. Prior to trial, the State offered Boyd a plea agreement, wherein Boyd would plead guilty to pandering and coercion, sexually motivated. The maximum sentencing exposure under the offered plea agreement was 4.4 to 11 years in prison. Boyd initially indicated he would accept the plea offer but ultimately rejected it. In rejecting the plea offer, Boyd maintained his innocence, contending his interactions with the victim were consensual, and took issue with the requirement that he would have to register as a sex offender. Boyd

¹The Honorable Carolyn Ellsworth presided over all pretrial, trial and sentencing proceedings, and the Honorable Jasmin Lilly-Spells presided over all postconviction proceedings.

proceeded to trial and was convicted of all the charges. The district court sentenced him to just over 21 years (256 months) to life in prison.

In his postconviction petition for a writ of habeas corpus, one of Boyd's claims was that counsel did not explain to him the penal consequence of going to trial, i.e., that he could receive a maximum sentence of 43 years to life in prison if he was convicted of all charges at trial. Boyd alleged he would have accepted the plea offer had counsel explained that consequence to him, notwithstanding that he maintained his innocence throughout all the proceedings and that he did not want to register as a sex offender.

The district court denied the petition without first conducting an evidentiary hearing. This court affirmed the district court's decision in part, reversed in part, and remanded the matter for an evidentiary hearing on Boyd's claim that counsel was ineffective for failing to explain the penal consequences of going to trial before Boyd rejected the plea offer.² *Boyd v. State*, No. 85410-COA, 2023 WL 5030774 (Nev. Ct. App. Aug. 7, 2023) (Order Affirming in Part, Reversing in Part, and Remanding). Unfortunately, Boyd's counsel passed away in 2022 and could not testify at the evidentiary hearing as to his communications with Boyd regarding the penal consequences of going to trial. After conducting an evidentiary hearing, where Boyd and the original prosecutor testified, the district court granted Boyd's petition as to his claim that counsel was ineffective for failing to explain the penal consequences of going to trial before Boyd

²This court also remanded for an evidentiary hearing on Boyd's claim that counsel was ineffective for failing to investigate. The district court held an evidentiary hearing on that claim and denied it. The denial of that claim is not before this court on appeal. *See State v. Bennett*, 119 Nev. 589, 593, 81 P.3d 1, 3-4 (2003).

rejected the plea offer and ordered the State to reoffer Boyd the ability to plead guilty to pandering and coercion, sexually motivated.

On appeal, and among other claims, the State argues that the district court erred by granting Boyd's petition because Boyd failed to demonstrate a reasonable probability that he would have accepted the plea offered by the State and thus failed to demonstrate prejudice. "During plea negotiations defendants are entitled to the effective assistance of competent counsel." *Lafler v. Cooper*, 566 U.S. 156, 162 (2012) (internal quotation marks omitted); see also *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1229 (2008) ("A defendant is entitled to effective assistance of counsel . . . when deciding whether to accept or reject a plea bargain."). To demonstrate ineffective assistance of trial 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 establish prejudice where a defendant rejects a plea offer based on counsel's objectively unreasonable advice, a defendant must demonstrate a reasonable probability that he would have accepted the plea offer, the prosecutor would not have withdrawn it, the district court would have accepted it, and the resulting conviction and/or sentence would have been less severe than what the defendant received. *Lafler*, 566 U.S. at 164. Both deficient performance 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).

After considering the record and the testimony at the evidentiary hearing, the district court determined that Boyd had demonstrated counsel's performance was deficient. The district court found Boyd credible in his testimony that counsel failed to inform him regarding the consequences of going to trial. The district court also found that nothing in the record demonstrated counsel explained the consequences and benefits of the plea or the potential consequences and benefits of trial. The district court found that, prior to trial, Boyd was offered a plea deal to "enter[] a plea of guilty of coercion, sexually motivated and pandering" and that Boyd unequivocally testified he would have taken the offered plea because, had he known the consequences of going to trial, he would not have risked 39 years in prison.³ The district court also found that Boyd testified he did not know whether he could plead no contest or pursuant to *Alford*⁴ and thus, Boyd did not have a full understanding of the circumstances where a defendant can plead guilty, no contest, or pursuant to *Alford*. The district court determined Boyd's testimony that he would have taken the plea offer and his confusion regarding the types of pleas demonstrated a reasonable probability Boyd would have taken the plea offer, and thus Boyd demonstrated he was prejudiced.

³At the evidentiary hearing Boyd testified he thought the maximum minimum sentence he could receive if he went to trial and was convicted on all charges was 39 years. However, the maximum minimum sentence he faced was 43 years.

⁴*North Carolina v. Alford*, 400 U.S. 25 (1970).

Based on the unique facts of this case, we disagree with the district court's legal conclusion that Boyd demonstrated he was prejudiced. Even accepting the district court's factual findings, the district court's application of the law to those facts is not supported by the record. Boyd was required to demonstrate a reasonable probability he would have accepted the State's offer. At the evidentiary hearing, although Boyd testified he would have taken the plea offered by the State given the amount of prison time he faced if convicted at trial, he also testified he was innocent of the charges. On cross-examination, the State asked him how he would plead guilty to crimes for which he was not guilty. Boyd responded he would plead no contest or pursuant to *Alford*. When asked whether a no contest or *Alford* plea offer had been extended, Boyd stated he was not sure. Boyd refused to answer whether he would have admitted his guilt when entering his plea. Specifically, he testified he could not answer that question because "[he] wouldn't know if [he] was able to be *Alford* plea, no contest." He also testified he could not "make a hypothetical answer" to the State's question about whether he would have pleaded guilty if he had to admit he committed the alleged crimes.

Boyd's refusal to answer whether he would admit guilt in order to accept the guilty plea offer fails to meet the prejudice standard. Rather, Boyd's testimony demonstrates he would not have accepted the plea offered—for Boyd to plead guilty to pandering and coercion, sexually motivated. And the record is devoid of any evidence that the State's offer included the entry of a no contest or *Alford* plea. While we acknowledge Boyd's testimony that he of course would have taken a deal for less prison time, there is insufficient evidence he would have pleaded guilty where he had to admit his guilt, especially where Boyd maintained his innocence.

Further, there is no evidence to support that Boyd was offered any other type of plea, such as *Alford*, instead of a guilty plea. Therefore, we conclude Boyd failed to demonstrate a reasonable probability he would have accepted the plea offer, and thus he failed to demonstrate he was prejudiced. Accordingly, we conclude the district court erred by granting the postconviction habeas petition, and we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁵


_____, C.J.
Bulla


_____, J.
Westbrook

GIBBONS, J., concurring:

I agree with the majority that Boyd did not establish prejudice in the proceeding below and the district court's order must be reversed. I am writing separately, however, because Boyd also failed to demonstrate that his trial counsel's performance was deficient, a separate burden he had to overcome.

Boyd was convicted, pursuant to a jury verdict, of all charged offenses, including three counts of sexual assault, category A felonies; first degree kidnapping, a category A felony; sex trafficking, a category B felony;

⁵On March 20, 2026, Boyd filed a motion for decision on briefing. Given our disposition, we conclude the motion is moot.

and extortion, a category B felony. The district court imposed a sentence of life in prison, with a minimum parole eligibility of 256 months. The factual allegations against Boyd, who was age 41, were that he met 18-year-old B.W. in April 2019 on the Las Vegas Strip. B.W. had just become homeless and had little money. Boyd initiated conversation with her, and after learning of her vulnerable circumstances, offered to help her make some money—all she had to do was talk to men.

Boyd brought B.W. to his hotel room and she spent the night. The next morning Boyd told her she was his and she had to have sex with him. B.W. refused but Boyd forced her to have sexual intercourse. Boyd then told her it was time to get to work. He bought her new clothes telling her she had to look pretty. For the next four months, Boyd compelled her to work as an illegal prostitute and to give him all the money she earned. Boyd also sexually assaulted B.W. two more times. When B.W. attempted to break free, Boyd threatened her and her family with violence and said he would post sexually explicit pictures and videos of her on the internet if she left him. She finally escaped through a ruse of her own, calling the police from a bathroom to report Boyd's actions. Boyd was arrested immediately thereafter.

Shortly before Boyd was to go to trial, his attorney announced at the calendar call that an agreement had been reached to resolve the case. Under the terms of this agreement, Boyd would plead guilty to one count of coercion—sexually motivated—and one count of pandering. That meant if he pled guilty to those two counts, the six charges in the information would be dismissed. Each party reserved the right to argue at sentencing, but the maximum sentence was 11 years, and probation was possible for both

offenses. Also, a written guilty plea agreement would be prepared for the next hearing.

Two days later, the parties were back in district court and Boyd was present. Boyd's attorney revealed to the court that negotiations had broken down and that a motion he had prepared for trial was not filed because "we had reached an agreement." As the attorneys and the court discussed logistical issues pertaining to the trial, Boyd interjected and requested to speak. The district court allowed it but cautioned Boyd not to talk about the case. Boyd proclaimed:

I'm not going – I don't have nothing I can say to hurt me anyway, because I'm innocent. However, I've been incarcerated for six months and twenty days based on accusations of a person, who I was in a consensual relationship with. I was going to sign the deal, but I can't sign the deal where I'm registering as a sex offender for someone who's been consensual with me for seven months and then decided to call the police one day. So that's why I'm not following through with that.

Boyd then further explained his state of mind:

I'm not all of a sudden at 42 going to coerce you to have sex with me. So I can't sign that type of deal and I will go all the way to trial, of course. But I don't want to prolong my trial date anymore. I've been – my life has been prolonged based on the lying accusations of a person. I wasn't in a commission of a felony – or anything.

He then concluded:

The problem is I don't want to prolong things any longer. I – if I'm – I want to continue on with my court date, whatever evidence they have or whatever my lawyer has, I want to have it nipped in the bud. And let's just move forward on the 18th please, because my life has been on hold for nearly seven months for the accusations of a person. I'm an innocent man. Nobody knows what it feels like to sit back there for a lying female. I'm in jail and didn't do nothing.

The district court attempted to stop Boyd from talking but he kept going. An officer then intervened with Boyd. The district court was explaining when the trial would start and Boyd volunteered: “*My attorney has been pretty good with me. I don’t have any objections to my attorney. That’s not what my point was.*” (emphasis added). The court responded: “*I know. He’s a good lawyer.*” (emphasis added). The jury trial proceeded and Boyd was found guilty of all charges after an eight-day trial despite his sworn testimony denying the accusations.

At Boyd’s sentencing hearing, Boyd continued to profess his innocence and complain about procedural irregularities in the case. As the district court was pronouncing its sentence, Boyd interrupted to question which sentences were consecutive and concurrent. He then interrupted at the conclusion of the court’s comments in an attempt to discuss the evidence again. The court would not go there and Boyd retorted, “That’s crazy.” Notably, despite talking more during the sentencing hearing than anyone else in the courtroom and complaining about numerous things, Boyd never stated that he did not know what penalties he faced if convicted at trial, nor that his attorney failed to advise him about the evidence against him, or the consequences for a guilty verdict.

Boyd appealed and the Nevada Supreme Court affirmed the conviction on all six counts. *See generally Boyd v. State*, No. 81195, 2022 WL 129510 (Nev. Jan. 13, 2022) (Order of Affirmance). Boyd raised numerous issues, and the supreme court addressed the sufficiency of the evidence and Boyd’s testimony. *Id.* at *7. The court observed that Boyd was able to present his defense that all his acts with B.W. were consensual and noted that he was able to attempt to refute B.W.’s testimony that she was controlled by him and she could never leave. *Id.* at *2. Concluding that

a jury could reasonably determine from Boyd's threats and violence that he kidnapped B.W. even though they were apart at times, the supreme court affirmed the judgment of conviction. *Id.* at *8.

Boyd later sought postconviction relief, raising several claims before the district court. He asserted, among other things, that trial counsel was ineffective during plea negotiations because counsel used racially derogatory language and threatened him while attempting to persuade him to accept the State's plea offer. Boyd also alleged that his attorney said that if he "didn't take the deal and sign as a sex offender for 15 years [Boyd would] go to prison for sure." Further, he asserted that his trial attorney failed to explain the consequences of not taking the plea offer to him. He also claimed that if his attorney had told him about the lengthy sentence he faced, he would have accepted the plea offer.

The district court held a non-evidentiary hearing in 2022 and denied the petition. The court found that the alleged racial animus by counsel was not cognizable under Boyd's ineffective assistance claim. Moreover, the court found that the claim did not show the result would have been different (meaning that, without the animus, Boyd would have accepted the plea offer and not gone to trial). The court later explained: "Assuming that allegation of derogatory statements alleged as ineffective assistance of counsel are true, it undermines defendant's argument that he was not informed about the risks of going to trial."

The district court also recited that Boyd's own statements demonstrated that his attorney had advised him of the risks of going to trial. The district court additionally concluded that because Boyd asserted his defense of innocence and that he did not commit the charged offenses, he would have gone to trial even if "counsel had better advised him of the

benefits and costs of proceeding to trial versus accepting a plea deal.” The district court had previously noted that the sticking point in the plea negotiations was the requirement that Boyd register as a sex offender (which he would not agree to). Therefore, the district court denied Boyd’s petition concluding that Boyd had not met either prong of the *Strickland* test for ineffective assistance of counsel, deficiency and prejudice. See *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984).

Boyd appealed that decision and this court resolved the case. See generally *Boyd v. State*, No. 85410-COA, 2023 WL 5030774 (Nev. Ct. App. Aug. 7, 2023) (Order Affirming in Part, Reversing in Part, and Remanding). This court affirmed in part and reversed in part, concluding that, when Boyd alleged his trial attorney used racial epithets to convince him to plead guilty, his claim that counsel threatened him was not specific enough and that racial slurs did not establish a conflict of interest in this particular circumstance. The district court order was, however, reversed and remanded for an evidentiary hearing on the issue of whether counsel failed to explain the consequences of the plea and that Boyd faced a very lengthy prison sentence if convicted at trial.

The district court conducted an evidentiary hearing as directed on remand in 2024. Although Boyd’s trial counsel did not testify because he was deceased, Boyd testified extensively at the hearing consistent with the allegations in his writ petition. Even so, a close review of the hearing transcript reveals additional important statements from Boyd including why he chose to refuse the plea offer that his attorney had negotiated.

Boyd agreed during direct examination by his attorney that he understood the plea offer was for two charges where he could receive probation or concurrent sentences and that the combined possible

maximum sentence was 11 years of imprisonment. However, he testified that he did not learn of the sex offender registration requirement until just before the hearing where he was to enter the guilty plea. He stated his attorney did not originally advise him that registration was a consequence of the agreement and that caused the deal to fall through.

He also testified that his attorney did not advise him about the strengths and weaknesses of his case, especially that “this girl’s testimony can you put you in prison or he never told me how much time I can get. I never knew that.” He said the only thing his attorney told him was that he would go to prison for sure if he did not take the deal.

Boyd then claimed that, if he had known the strengths and weaknesses of the case, he would have taken the deal. But he again emphasized that he did not take the deal because he was not told about the sex offender registration and that he would have to register for 15 years or until he was 57 years old. He further explained that while he had accepted a deal to plead guilty to pandering and coercion, he could not accept that the coercion charge would include an element that it was sexually motivated and he would have to register as a sex offender. His exact words were:

“[I]nitially, okay I would take the deal. When I came back, he [counsel] sprung that on me right then and I’m – that’s what threw me off the deal.”

He also testified he did not have time to call his family to talk to them. Later, he added:

“I would have been willing of course [to] take anything not to be sitting up in prison, but he [counsel] didn’t explain that to me.

On cross-examination by the State, Boyd admitted that his attorney showed him police bodycam footage that contained potential exonerating information and that they had periodic discussions about the

case. He also agreed that he had always maintained his innocence and he stated again that he did not commit the crimes. Nevertheless, he asserted that he would have taken the plea offer even with sex offender registration if he had been aware of the possible sentence of 39 years to life. The State pressed him on this issue and Boyd claimed he never asked anyone about the amount of time he was facing. He later clarified that he never asked his trial attorney about the time he could get. When the State again questioned him on his innocence, Boyd stated he was innocent but that he would have pleaded guilty to avoid a life sentence. However, Boyd also stated that he did not know how he would have responded if the district court had asked him whether he was *guilty* during a change of plea proceeding, explaining that he could not answer a hypothetical question. On redirect, Boyd agreed that the plea offer was a good one with a light sentence and that reflected his belief that the prosecution did not have much evidence.

The district court then issued a written order recounting the relevant procedural history—including the proceedings between 2019 and 2020, the district court’s 2022 order denying Boyd’s petition in full, and this court’s 2023 order affirming in part but reversing and remanding for an evidentiary hearing. In its written order, the district court recited the testimony from the deputy district attorney in 2024 that the plea agreement “unraveled” because Boyd did not want to register as a sex offender. The court found that Boyd was credible in his hearing testimony but acknowledged that “testifying after the fact” is self-serving. Nevertheless, the court concluded that Boyd’s testimony was imbued with sufficient guarantees of trustworthiness in that he testified under oath, was cross-examined, was consistent, and that there were no prior inconsistent statements. It further concluded that Boyd’s testimony was corroborated

because the deputy district attorney testified that he had observed Boyd's attorney "going over the plea agreement in Court" with Boyd. The court recited excerpts from the hearing transcript based upon Boyd's testimony to illustrate Boyd's contentions that he was not advised of the strengths and weaknesses of the case and the consequences of going to trial, and that he would have taken the plea offer had he known the sentence he was facing. The district court also recognized that Boyd was initially willing to accept the plea offer but not after he learned that he would have to register as a sex offender.

Applying the *Strickland* test, the district court reached the opposite conclusion from its 2022 order and determined that Boyd's trial attorney was deficient during the plea-bargaining process by failing to advise Boyd of the strengths and weaknesses of the case and the potential consequences of trial. The court found this purported failure to be prejudicial because—according to Boyd's testimony in 2024—he would have taken the plea offer in 2020, had his attorney properly advised him. In sum, the court found that each prong of the *Strickland* test was satisfied and that Boyd was entitled to have the benefit of the plea offer made in 2020 with credit for time served since July 26, 2019, to the date of a resentencing. Boyd would, as a result of the district court's order, be eligible for probation and face a possible maximum sentence of 11 years imprisonment.

The district court commented in the first footnote of its order that Boyd had the burden to prove ineffective assistance of counsel. But the State could possibly have presented testimony from Boyd's counsel who represented him at the preliminary hearing as to whether that attorney explained to Boyd the sentencing ranges for the various charges. The court emphasized that it was "not impermissibly shifting the burden" of proof to

the State. Rather, the court was calling attention to the State's failure to offer sufficient evidence to refute Boyd's credible and consistent testimony.

The State appealed. It argues that the presumption of effective assistance of counsel was not properly applied, and that the district court's findings were clearly erroneous and not supported by substantial evidence, particularly because Boyd's testimony was unsupported and self-serving. Further, even if the findings were adequate, the State argues that Boyd did not demonstrate prejudice. Boyd responds arguing that the district court correctly found that his trial attorney did not adequately advise him of the strengths and weaknesses of the case or the possible maximum penalties.

Here, as the State suggests, Boyd's petition is unlike a typical ineffective-assistance claim because his trial counsel, Randall Pike, died in 2022 and therefore could not testify about the advice he provided during plea negotiations. Regardless, the record does not establish that counsel's representation was deficient. Nor does the evidence—apart from Boyd's after-the-fact, self-serving testimony—show that he would have accepted the plea offer if properly advised. Boyd's contentions are further undermined by his contemporaneous statements from 2019 and 2020, which reflected his intent to proceed to trial, his refusal to register as a sex offender, and his continued insistence that he had not committed any crimes. Accordingly, the district court should have denied the petition in 2024.

Standard of review

A petitioner claiming ineffective assistance of counsel must prove both prongs of the *Strickland* ineffective assistance test. *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1997) (describing deficiency and prejudice). There is a presumption that counsel is effective. *Means v.*

State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Surmounting *Strickland*’s high bar is never an easy task.” *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010). Counsel’s effectiveness does not mean error free representation. *Jackson v. Warden*, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975). A claim of ineffective assistance of counsel is subject to independent review as a mixed question of law and fact. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Self-serving statements from a petitioner are suspect especially when uncorroborated or contradicted by other evidence. See *United States v. Gordon*, 156 F.3d 376, 380-81 (2d Cir. 1998) (holding that a defendant’s self-serving, postconviction testimony regarding whether he would have accepted a plea must be supported by objective evidence).

Boyd has not proven deficiency even if his testimony in 2024 was true

The State correctly argues that Boyd’s testimony at the evidentiary hearing was largely the same as his allegations made in his initial writ petition and in his affidavit attached to the supplemental petition. Yet when the district court reviewed the petition and affidavit in 2022, it concluded that Boyd’s attorney was not deficient in his performance and Boyd’s own statements demonstrated that his attorney advised him of the risks of going to trial. The question presented by this court when remanding for an evidentiary hearing was related to the factual question of whether counsel advised Boyd of the penalties in light of Boyd’s claim that he would have accepted the plea offer and not gone to trial. However, neither Boyd nor the district court cited binding authority suggesting that—if all penalties are not disclosed—counsel’s conduct is automatically deficient. The heart of the question here in this section is whether counsel was deficient when he negotiated a favorable plea agreement and Boyd

accepted it, only for Boyd to later repudiate it and demand that he proceed to trial as soon as possible, with whatever evidence the State and the defense had, knowing that his counsel had said he would go to prison for sure if he went to trial.

Even accepting *arguendo* that Chief Deputy Special Public Defender Randall Pike did not tell Boyd all of the penalties, Boyd had been arraigned and knew all of the charges: four category A felonies including sexual assault and first-degree kidnapping, and two category B felonies, sex trafficking and extortion. The plea agreement called for the six charges to be dismissed and instead, Boyd would plead guilty to one category B felony, sexually motivated coercion, punishable by a maximum of six years, and one category C felony, pandering, punishable by a maximum five years, but probation was available for each charge.

Boyd was not a passive participant in the plea process. He was familiar with criminal proceedings, invoked his speedy-trial right against counsel's advice at arraignment, and repeatedly expressed his concerns to the district court throughout the case. The record also suggests that Boyd knew the State's offer was favorable: it dismissed six serious felony charges—each a category A or B felony—in exchange for two probation-eligible charges. Boyd acknowledged as much at the 2024 evidentiary hearing, where he recognized the leniency of the offer. Boyd discussed the apparent written plea agreement in the courtroom with his attorney according to the testimony. This document is important because it summarizes the process for protecting a defendant's rights and counsel's responsibilities to his client. In fact, the district court found that this event as described by the deputy district attorney partially corroborated Boyd's testimony.

NRS 174.035(8)(b) mandates a written plea agreement in certain situations, like here, where the maximum sentence could be more than ten years. NRS 174.063 requires plea agreements to be in a certain form, and that form is in the statute containing the detailed contents of a written plea agreement. Under the first heading (*Consequences*) the penalties are outlined, including whether probation is available, whether the counts to be pled can result in concurrent or consecutive sentences, and that dismissed charges can still be considered at sentencing. NRS 174.063(1). Under the third heading (*Voluntariness*), the statute explains that the defendant is verifying his understanding of the agreement and its elements therein including the original charges: “I have discussed the elements of all the original charges against me with my attorney . . . and I understand the nature of these charges against me” and “I have discussed with my attorney . . . any possible defenses and circumstances which might be in my favor” and that “[a]ll of the foregoing elements, consequences, rights and waiver of rights have been thoroughly explained to me by my attorney.” *Id.* And, under the final heading (*Certificate of Counsel*), counsel states that “I have fully explained to the defendant . . . [and] as an officer of the court [I] hereby certify” that “I have fully explained to the defendant the allegations contained in the charges to which guilty . . . pleas are being entered” and “I have advised the defendant of the penalties for each charge.” NRS 174.063(2). Counsel must verify to the best of their knowledge and belief, that the defendant “understands the charges and the consequences of pleading guilty . . . as provided in this agreement.” *Id.*

Here, the district court found that Boyd’s testimony regarding the plea process was corroborated by the original prosecutor and is evidenced in the following exchange.

THE COURT: did you see Mr. Pike going over the plea agreement in Court?

THE WITNESS: Yes.

This is the only corroboration of Boyd's testimony that the district court cited. The court concluded: "This goes to whether or not prior counsel discussed the consequences of the actual charges that [Boyd] was facing and discussed them in relation to the plea agreement previously." Thus, this testimony and finding suggests that Boyd's attorney presented the plea agreement to Boyd and that the duties placed on defense counsel under law by NRS 174.063(2) had already been completed because they are extensive.

At the calendar call two days before the renewed calendar call where Boyd was to enter a guilty plea, defense counsel represented that the parties had reached an agreement. That representation supports an inference that counsel had communicated the plea terms to Boyd and completed the statutory duties required before a plea may be entered, including advising Boyd of the nature of the charges and the consequences of the plea. *See* NRS 174.063(1), (2). Boyd later confirmed, both at the second calendar call and during his testimony in 2024, that an agreement existed and that he was prepared to proceed with it. However, the agreement unraveled after he learned that it required sex-offender registration. Indeed, the only fact that changed was that Boyd discovered he would have to register as a sex offender for 15 years and that was unacceptable for him because he would then be 57 years old before he could be released from the registration obligation. *See generally* NRS Chapter 179D. Thus, Boyd alone nixed the agreement in 2020 and

contemporaneously volunteered that: “My attorney has been pretty good with me. I don’t have any objections to my attorney.”

It should also be noted that Boyd’s assertion that Mr. Pike failed to advise him about the sex-offender registration requirement, standing alone, does not establish deficient performance. *See Nollette v. State*, 118 Nev. 341, 347-49, 46 P.3d 87, 91-93 (2002) (holding that sex-offender registration is a civil and collateral consequence of a guilty plea that need not be advised by the court during the plea canvass, and holding that counsel’s failure to advise the defendant of the required sex-offender registration and potential loss of his professional licenses did not constitute ineffective assistance under *Strickland*). Boyd’s testimony, therefore, does not meaningfully support the implication that Mr. Pike’s lack of informed communication rendered his performance deficient.

Accordingly, under these circumstances—even without the written plea agreement in the record and accepting Boyd’s testimony as true—and under independent review, *see Lader*, 121 Nev. at 686, 120 P.3d at 1166, the record does not support that his counsel was deficient and ineffective. Mr. Pike negotiated a favorable plea agreement for Boyd but Boyd repudiated it because he would not agree to plead guilty to a charge that required sex offender registration. Thus, Boyd is responsible for rejecting the plea offer and not his deceased trial attorney. The first prong of *Strickland* was therefore unsatisfied by Boyd and, as explained next, the testimony he proffered to the district court does not constitute, nor was it paired with substantial evidence, to overcome the presumption of effective assistance of counsel.

Boyd has not proven deficiency with his self-serving testimony in 2024

As the State argues, Boyd's 2024 testimony was uncorroborated and largely repeated the same self-serving assertions that the district court found insufficient in 2022 to establish either deficient performance or prejudice under *Strickland*. Although the court later found that testimony to be imbued with sufficient guarantees of trustworthiness, that finding is difficult to reconcile with Boyd's contemporaneous statements during the underlying proceedings, where he repeatedly maintained his innocence, expressed his desire to proceed with trial, and rejected the plea offer after learning that it required sex-offender registration. Against that record, Boyd's 2024 testimony—offered only after his convictions were affirmed by the Nevada Supreme Court and while he was serving a life sentence—does not overcome the presumption that counsel provided effective assistance.

In Nevada, our caselaw does not expressly disregard testimony based solely on the fact that such testimony contains self-serving statements. Rather, when a court considers the validity of a self-serving statement, something more is typically coupled with its sufficiency finding. *See Elliot v. State*, No. 79368, 2020 WL 4035486, at *1 (Nev. Jul. 16, 2020) (Order of Affirmance) (determining self-serving statement was undermined by contradictory evidence); *Turner v. State*, No. 69444, 2017 WL 698523, at *2 (Nev. Feb. 16, 2017) (Order of Affirmance) (concluding that previous statements on the same issue were equivocal); *see also Goldstein-Sanchez v. Emp. Sec. Div.*, No. 85920-COA, 2024 WL 1269834, at *4 (Nev. Ct. App. Mar. 25, 2024) (Order of Affirmance) (determining a self-serving statement was not credible).

Federal courts also meet uncorroborated, self-serving testimony with skepticism, questioning the wisdom of the trial court's reliance upon a defendant's statements that he would not have pleaded guilty but for

counsel's alleged deficiencies. 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.”); *Cullen v. United States*, 194 F.3d 401, 407-08 (2d Cir. 1999) (instructing the district court that “[t]hough a claim that [the defendant] would have accepted the plea would be self-serving,” “[t]he credibility determination should be based on all relevant circumstances”); see also *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002) (stating that the “court has refused to find a ‘genuine issue’ where the only evidence presented is ‘uncorroborated and self-serving’ testimony”); *Johnson v. Wash. Metro. Area Transit Auth.*, 883 F.2d 125, 128-29 (D.C. Cir. 1989) (explaining that judges have the discretion to exclude testimony “that is so undermined as to be incredible,” like when a “claim is supported solely by the plaintiff’s own self-serving testimony, unsupported by corroborating evidence, and undermined either by other credible evidence, physical impossibility or persuasive evidence that the plaintiff has deliberately committed perjury”); *New England Merchants Nat’l Bank v. Rosenfield*, 679 F.2d 467, 473 (5th Cir. 1982) (stating that “[the] court is [not] required to accept, as credible, unsupported self-serving testimony that flies in the teeth of unimpeachable contradictory evidence and universal experience”).

Here, the district court should not have relied upon Boyd’s uncorroborated, self-serving testimony. This is especially true when it had the actual contemporaneous statements of Boyd from the justice and district court proceedings, statutory mandates regarding the plea-bargaining process, and—most notably—the benefit of universal experience. When the only witness to the other side of the conversation is deceased, such as Mr. Pike in this matter, a defendant like Boyd could

present any story with impunity—alleging that counsel failed to properly advise him of the consequences in not accepting the plea agreement. Further, the statement that had he been adequately advised by counsel, he would have accepted the plea offer and avoided trial. But this story does not align with what Boyd volunteered at the change of plea hearing:

I was going to sign the deal, but I can't sign the deal where I'm registering as a sex offender for someone who's been consensual with me for seven months and then decided to call the police one day. So that's why I'm not following through with that.

...

So I can't sign that type of deal and I will go all the way to trial, of course.

...

My attorney has been pretty good with me. I don't have any objections to my attorney. That's not what my point was.

The district court responded to this last, volunteered statement from Boyd: "I know. He's a good lawyer." Boyd did not challenge this statement. And at the February 12, 2020 hearing, Boyd explained that he rejected the plea offer because he did not want to register as a sex offender for 15 years and because he maintained that he had not committed a sex offense. The case then proceeded to trial, where Boyd testified under oath that his conduct toward B.W. was consensual and that no sexual assault, kidnapping, sex trafficking, or extortion occurred, but the jury nevertheless found him guilty. Further, at his sentencing hearing in 2020, Boyd never stated that he did not know the penalties he faced if convicted at trial, nor that his attorney, Mr. Pike, failed to advise him about the evidence against him or the consequences he faced if there was a guilty verdict. In fact, he voiced no complaints about his attorney, advancing only arguments of his innocence for the district court's consideration.

Boyd's petition for postconviction relief, however, attacked Mr. Pike's representation on grounds Boyd had not raised nor even mentioned before or during the sentencing hearing—including that counsel did not advise him of the penalties for the charges he faced at trial, and that Mr. Pike used vile racial epithets in an attempt to convince him to plead guilty. This argument was not persuasive in the district court or in our court in the first appeal, but it begs the question: Why would Mr. Pike resort to such repugnant tactics to convince Boyd to plead guilty when he simply could have advised him that he was facing four mandatory life sentences and possibly decades in prison, in contrast to a chance for probation under the plea bargain? These are the most direct and obvious points counsel would have conveyed to a client in Boyd's position. Yet according to Boyd, Mr. Pike omitted those facts and instead relied on racial slurs and other bigotries as the basis for his advice. *See Boyd*, No. 85410-COA, 2023 WL 5030774 at *2 (reciting racial epithets that Boyd alleged his counsel uttered).

Nevada courts, like others, should consider “universal experience” when evaluating the persuasive weight of self-serving statements. *See Rosenfield*, 679 F.2d at 473. The fact that Boyd asserts that Mr. Pike conveyed that prison was certain if Boyd did not take the plea offer is compelling evidence confirming that the consequences of going to trial were discussed. So, was Boyd accurately recounting events when he wrote that Mr. Pike used racial slurs in an attempt to convince him to plead guilty? Was Boyd telling the truth when he testified that Mr. Pike did not advise him the penalties when trying to convince him to plead guilty? Or is Boyd prevaricating about both? The trial court record and the presumption of effective assistance supplies the answer absent other evidence to the

contrary. A criminal defense attorney would naturally explain the risks and benefits of proceeding to trial, including the possible penalties upon conviction, particularly where acceptance of the plea offer would avoid the possibility of multiple mandatory life sentences. See NRS 174.063(1), (2).

Indeed, affirmative evidence is required to establish that Boyd's conviction was obtained in violation of his constitutional rights, and his reliance on uncorroborated, self-serving statements crumbles under the weight of his burden. Despite his claims of ineffective assistance of counsel, his conviction is presumed constitutionally adequate. See *Means*, 120 Nev. at 1012, 103 P.3d at 33 (emphasizing that the "petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence"); cf. *Parsons v. State*, 116 Nev. 928, 936 n.7, 10 P.3d 836, 841 n.7 (2000) ("[I]f the record does not, on its face, raise a presumption of constitutional infirmity, then the conviction is afforded a presumption of regularity and the defendant must overcome that presumption by presenting evidence to prove by a preponderance that the prior conviction is constitutionally infirm." (citing *Dressler v. State*, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991))). Nevada's approach aligns with federal court precedent emphasizing a similar burden of proof. See *Alcala v. Woodford*, 334 F.3d 862, 869 (9th Cir. 2003) (stating that a habeas petitioner must prove the factual allegations underlying claims of ineffective assistance by a preponderance of the evidence); see also *Triana v. United States*, 205 F.3d 36, 40 (2d Cir. 2000) (applying the preponderance standard to the underlying facts of a petition to overturn a conviction); *James v. Cain*, 56 F.3d 662, 667 (5th Cir. 1995) ("A petitioner who seeks to overturn his conviction on grounds of ineffective assistance of counsel must prove his entitlement to relief by a preponderance of the evidence.").

As discussed above, federal precedent likewise reflects skepticism toward a defendant's attempt to satisfy his burden through self-serving statements alone, particularly when seeking to establish a constitutional defect in an otherwise normative conviction. See *Turner v. Calderon*, 281 F.3d 851, 881 (9th Cir. 2002) (citing *Cuppett v. Duckworth*, 8 F.3d 1132, 1139 (7th Cir. 1993)) (emphasizing that "self-serving statements by a defendant that his conviction was constitutionally infirm are insufficient to overcome the presumption of regularity accorded state convictions"); see also *Blake v. United States*, 723 F.3d 870, 887 (7th Cir. 2013) (holding that "[a] claim of ineffective assistance of counsel must be supported by objective evidence, not merely by the movant's own self-serving testimony"); *United States v. Butt*, 731 F.2d 75, 80 (1st Cir. 1984) (holding the petitioner failed to substantiate his claim of ineffective assistance of counsel and upheld the presumption of regularity in the plea process where petitioner's statements at the plea hearing controlled over later contradictory statements).

Boyd therefore had the burden in this matter to prove constitutional infirmity of his conviction by a preponderance of the evidence. See *Means*, 120 Nev. at 1012, 103 P.3d at 33. Although the district court seemed to recognize the limitations on self-serving testimony, it found sufficient guarantees of trustworthiness, including that Boyd "testified under oath, was cross-examined, consistent in his testimony and that there are not prior inconsistent statements" to find Boyd credible. But Boyd's many statements in pretrial proceedings and at sentencing, plus trial testimony under oath in 2020, point to a much different conclusion. The most meaningful change in 2024 was that Boyd was serving a life sentence, and his prior mixed praise and mild criticism of counsel morphed into

allegations that Mr. Pike was both racist and incompetent in his representation of Boyd.

Accordingly, although credibility and trustworthiness findings ordinarily receive deference, the district court's findings regarding Boyd's testimony are not supported by the record as a whole because they rested on uncorroborated, self-serving statements. See *Williamson v. United States*, 512 U.S. 594, 600 (1994) (stating that "[s]elf-exculpatory statements are exactly the ones which people are most likely to make even when they are false"); cf. *Strickland*, 466 U.S. at 689 ("A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time."). Because Boyd failed to overcome the presumption of effective assistance by a preponderance of the evidence, and because his self-serving testimony did not otherwise establish constitutional deficiency in his conviction pursuant to the "high bar" required under *Strickland*, I conclude, upon independent review, that the district court's determination was clearly erroneous.

Boyd has not proven prejudice with his self-serving testimony in 2024

Strickland is a two-part test, and the second part required Boyd to establish prejudice in addition to deficiency. Here, just like with the deficiency prong, Boyd's contemporaneous statements in 2020 show he went to trial because he believed he was innocent and the jury would find him not guilty. Although I agree with the majority, I expand the discussion. As previously explained, Boyd was clear that he could not accept being an admitted sex offender that would require registration for 15 years, so he

instead opted to take his chances against the purportedly weak evidence in the State's case-in-chief.

At the change of plea hearing in 2020 Boyd said:

I'm not going – I don't have nothing I can say to hurt me anyway, because I'm innocent. However, I've been incarcerated for six months and twenty days based on accusations of a person, who I was in a consensual relationship with.

...

I'm not all of a sudden at 42 going to coerce you to have sex with me. So I can't sign that type of deal and I will go all the way to trial, of course. But I don't want to prolong my trial date anymore. I've been – my life has been prolonged based on the lying accusations of a person. I wasn't in a commission of a felony – or anything.

...

I want to continue on with my court date, whatever evidence they have or whatever my lawyer has I'm an innocent man. Nobody knows what it feels like to sit back there for a lying female. I'm in jail and didn't do nothing.

The evidentiary hearing in 2024 concluded with a revealing statement from Boyd. In response to the deputy district attorney's questioning about the types of pleas, Boyd said he did not know what he would have said if the district court asked him if he was guilty (because he was professing his innocence and an *Alford* or no contest plea had not been offered). Boyd then asserted he could not answer a hypothetical question or provide a hypothetical answer. On redirect, Boyd agreed that the plea offer was a good one with a light sentence and that reflected his belief that the prosecution did not have much evidence.

But if Boyd admittedly could not answer a hypothetical inquiry, how did he testify minutes before that he would have accepted the plea offer if his attorney had explained the case to him and the penalties he was

facing? The ability to answer this favorable hypothetical question is plain: self-interest. Anything could be claimed at the hearing in 2024 to avoid the life sentence he was serving. Perhaps this is why the legislature in NRS 51.105 provided limitations in analogous situations:

1. A statement of the declarant's *then* existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain and bodily health, is not inadmissible under the hearsay rule. (emphasis added).
2. A statement of memory or belief to prove the fact remembered or believed is inadmissible under the hearsay rule unless it relates to the execution, revocation, identification or terms of declarant's will.

(Emphasis added.)

And in NRS 51.345(1), another analogous situation, the legislature concluded that:

A statement tending to expose the declarant to criminal liability and offered to exculpate the accused in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

The district court also cited the evidence code regarding prior consistent statements, noting that these statements cannot be used to bolster self-serving testimony. *See Glover v. Eighth Jud. Dist. Ct.*, 125 Nev. 691, 704, 220 P.3d 684, 693 (2009). At the non-evidentiary hearing in 2022, the district court concluded from Boyd's written statements that, "Assuming that allegation of derogatory statements [racial slurs] alleged as ineffective assistance of counsel are true, it undermines [Boyd's] argument that he was not informed about the risks of going to trial." Further, the district court stated that because Boyd asserted his innocence, he would have gone to trial even if "counsel had better advised him of the benefits and costs of proceeding to trial versus accepting a plea deal." As noted

above, Boyd confirmed this at the conclusion of the change of plea hearing: “I want to continue on with my court [trial] date, *whatever evidence they have* or whatever my lawyer has” (emphasis added).

Upon an independent review, *see Lader*, 121 Nev. at 686, 120 P.3d at 1166, I agree that Boyd has not demonstrated prejudice. To the contrary, the record suggests he was emphatic about the prospects of trial, both because he advanced his innocence as well as his clear and unambiguous statements that repudiated the plea agreement because of sex-offender registration. To now claim that his counsel’s advisal of penalties would have changed his mind is simply revisionist history. This conclusion is reinforced by the fact that Mr. Pike—the only witness who could directly respond to Boyd’s allegations—is now deceased. Boyd’s contrary account is therefore supported only by sparse, self-serving, post-hoc testimony offered years after the relevant events and in response to a hypothetical question.

For these reasons, I conclude that Boyd failed to substantiate his ineffective-assistance claims. His arguments rest on self-serving, uncorroborated, and inconsistent statements that bely evidentiary concerns and burdens enshrined across state and federal court precedent. Nor has Boyd adequately demonstrated resulting prejudice from the alleged violation. Although the district court was bound by our partial reversal and remand in 2023, it nonetheless erred by granting Boyd’s postconviction petition.


_____, J.
Gibbons.

cc: Hon. Jasmin D. Lilly-Spells, District Judge
Attorney General/Carson City
Clark County District Attorney
Lowe Law LLC
Eighth District Court Clerk