

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SEAN MICHAEL MCKENDRICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82532-COA

FILED

FEB 23 2022

CLERK OF APPEALS
[Signature]

ORDER OF AFFIRMANCE

Sean Michael McKendrick appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 29, 2020. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

McKendrick claims the district court erred by denying his claims of ineffective assistance of trial-level counsel. To demonstrate ineffective assistance of trial-level 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*). Both components of the inquiry 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).

McKendrick claimed counsel's failure to fully investigate his mental health issues prevented them from being properly considered in mitigation at sentencing. McKendrick claimed he had a long history of mental health issues; had been diagnosed with bipolar disorder, post-traumatic stress disorder, and schizophrenia; and had been on numerous medications for these disorders. McKendrick's mental health history, including the above diagnoses, was contained in his presentence investigation report. Both McKendrick and his counsel addressed McKendrick's mental health in mitigation at sentencing, and the sentencing court agreed that there were "probably mental health issues."

McKendrick failed to explain what the results of an investigation into his mental health would have revealed or how the investigation would have benefitted him at sentencing. Accordingly, McKendrick failed to demonstrate counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel investigated McKendrick's mental health. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (providing that a petitioner claiming counsel did not conduct an adequate investigation must demonstrate what the results of a better investigation would have been and how it would have affected the outcome of the proceedings). Therefore, we conclude the district court did not err by denying this claim.

McKendrick also claimed counsel failed to object to or otherwise challenge his adjudication as a habitual criminal. McKendrick's plea agreement provided that the State was free to seek habitual criminal treatment if McKendrick failed to appear at subsequent hearings. McKendrick failed to appear at a scheduled sentencing hearing. During a subsequent sentencing hearing, McKendrick's counsel acknowledged

McKendrick qualified for habitual criminal treatment based on his criminal history but argued against it, citing recent changes by the Legislature that had yet to take effect. McKendrick failed to explain the basis of any objection or what additional actions counsel should have undertaken to challenge his adjudication as a habitual criminal. Accordingly, McKendrick failed to demonstrate counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel further challenged McKendrick's habitual criminal adjudication. Therefore, we conclude the district court did not err by denying this claim.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
TCM Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk