

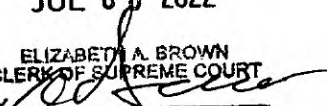
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERI ANN MCMAHON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83435-COA

FILED

JUL 08 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Teri Ann McMahon appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 11, 2021. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

McMahon argues the district court erred by denying her claims of ineffective assistance of defense counsel without conducting an evidentiary hearing.¹ To demonstrate ineffective assistance of defense 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

¹Multiple attorneys represented McMahon at the trial court level. Of those, McMahon alleged only the ineffective assistance of Dan M. Winder, Esq., and Arnold Weinstock, Esq., who were co-counsel and represented McMahon from the time of plea negotiations through sentencing.

be shown. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We give deference to the 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 her to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, McMahon claimed that counsel was ineffective for failing to advise her on issues regarding a key State's witness's plea agreement in an unrelated federal case. McMahon alleged that the State's case was based primarily on the witness's testimony and that the witness was looking to leverage his testimony in this case to get a favorable treatment in his federal case. McMahon claimed the inability to obtain the plea agreement may have impeded her ability to confront the witness or precluded his testimony at trial. To that end, McMahon claimed counsel should have filed a motion in limine to get a ruling on whether the State would have to produce the plea agreement and, if not, whether the witness would be permitted to testify and under what limitations.

McMahon failed to demonstrate counsel's advice was deficient, because she failed to demonstrate that the witness would not have been permitted to testify or that McMahon would not have been able to confront him about any consideration he received. *See Sheriff v. Acuna*, 107 Nev. 664, 669, 819 P.2d 197, 200 (1991) ("[C]onsideration promised by the [prosecution] in exchange for a witness's testimony affects only the weight accorded the testimony, and not its admissibility."). Further, McMahon failed to explain how counsel's alleged inability to obtain the plea agreement

affected her decision to plead guilty. Accordingly, McMahan failed to demonstrate counsel's performance was deficient or a reasonable probability she would have refused to plead guilty and would have insisted on proceeding to trial absent counsel's alleged inaction. Therefore, we conclude the district court did not err by denying this claim without an evidentiary hearing.

Second, McMahan claimed that counsel was ineffective for telling her she would be released on bail after the entry of her plea. McMahan failed to explain how her release on bail affected her decision to plead guilty. Accordingly, McMahan failed to demonstrate a reasonable probability she would have refused to plead guilty and would have insisted on proceeding to trial had counsel not told her she would be released on bail. Therefore, we conclude the district court did not err by denying this claim without an evidentiary hearing.²

Third, McMahan claimed that counsel was ineffective for telling her that she would receive full credit for the time she served in custody prior to sentencing. McMahan was on probation when she committed the underlying offense to which she pleaded guilty. McMahan's written plea agreement explained that if the offense to which she was pleading guilty was committed while she was on probation or parole, she was not eligible for credit for time served toward the instant offense. McMahan did not allege she did not understand this clause. Accordingly, McMahan failed to demonstrate she would have insisted on proceeding to trial had counsel

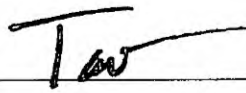
²McMahan claims for the first time in her opening brief on appeal that her release on bail was necessary to pursue cancer treatment. As McMahan did not raise this claim before the district court, we decline to consider it on appeal in the first instance. See *McNelson v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

properly advised her about her credit for time served. Therefore, we conclude the district court did not err by denying this claim without an evidentiary hearing.

McMahon also argues on appeal that the district court erred because its order was "merely a copy" of the State's response to her petition below. McMahon does not provide any argument regarding this issue, and we thus decline to address it. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
Isso & Associates Law Firm, PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk