

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT HOLMES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53848

**FILED**

MAY 07 2010

TACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK


ORDER OF AFFIRMANCE

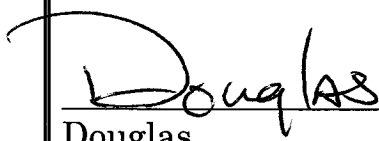
This is an appeal from a district court order denying appellant Robert Holmes' post-conviction motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

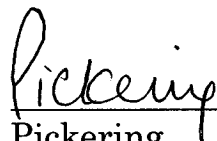
Holmes claims that the district court abused its discretion by failing to conduct an evidentiary hearing and denying his motion to withdraw his plea, which was based on a claim that counsel was ineffective for failing to investigate or prepare for trial, informing him that there were no defenses to the charges, and informing him that if he went to trial he would receive more time than he would if he pleaded guilty. We presume that the district court correctly assessed the validity of a plea on a motion to withdraw the plea and will not reverse its decision absent an abuse of discretion. Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 538 (2004). When reviewing the district court's resolution of an ineffective-assistance claim, 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).

Holmes failed to meet his burden to establish that counsel was deficient when advising him to enter a guilty plea, and his claims were not supported by sufficient factual allegations such that an evidentiary hearing was warranted. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984) (establishing two-part test for ineffective assistance of counsel); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting test in Strickland); Means v. State, 120 Nev. 1001, 103 P.3d 25 (2004) (burden of proving ineffective assistance is on defendant); Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (defendant not entitled to evidentiary hearing on claims not supported by specific factual allegations). Further, Holmes' subjective reliance on counsel's advice regarding a potential sentence was not sufficient to invalidate the plea. See Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975). Therefore, we conclude that the district court did not abuse its discretion, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Kathy A. Hardcastle, District Judge  
James J. Ruggeroli  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk