

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN TODD MADDOX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60793

FILED

NOV 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss appellant Kevin Todd Maddox's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Maddox contends that the district court erred by dismissing his petition without conducting an evidentiary hearing and by denying his claim that counsel was ineffective for failing to further investigate Maddox's mental deficiencies and for failing to investigate the underlying offense. When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the district court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005); see also Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Strickland v. Washington, 466 U.S. 668, 687-88 (1984) (establishing two-part test for ineffective assistance of counsel); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Maddox was entitled to an evidentiary hearing on his claims only if he "assert[ed] specific factual allegations that [were] not belied or repelled by the record and that, if true, would entitle him to relief." Nika

v. State, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008). And the petitioner must prove the facts underlying his claim of ineffective assistance of counsel by a preponderance of the evidence. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

Maddox argues that the district court erred by dismissing his claim that counsel was ineffective for failing to properly investigate his competency. Specifically, he claims that the mental illness uncovered in his psychological evaluation should have prompted his attorney to obtain a competency evaluation. Maddox did not claim that he was unable to understand the nature of the proceedings or the charges against him or to aid counsel in his defense. NRS 178.400(2); see also Calvin v. State, 122 Nev. 1178, 1182-83, 147 P.3d 1097, 1100 (2006) (adopting the federal standard for competency announced in Dusky v. United States, 362 U.S. 402 (1960)). And a mental illness diagnosis does not necessarily require a competency evaluation. See Indiana v. Edwards, 554 U.S. 164, 175-76 (2008); Ybarra v. State, 103 Nev. 8, 13, 731 P.2d 353, 356-57 (1987). Prior to entering his plea, Maddox submitted a psychological evaluation to the district court which revealed several mental disorders but the evaluation also concluded that Maddox functioned in the “normal intellectual range” and was oriented to place, time, and situation. The district court canvassed Maddox and found that he was competent to enter the plea. See Melchor-Gloria v. State, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) (stating that finding about defendant’s competence within discretion of trial court). Therefore, the district court did not err in dismissing this claim without conducting an evidentiary hearing.

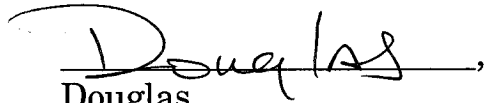
As to investigating possible defenses, the district court determined that Maddox failed to demonstrate deficiency or prejudice,

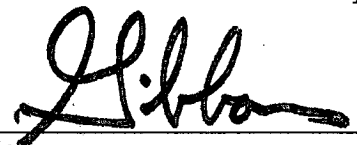
because he failed to support this claim with specific facts that, if true, would have entitled him to relief. Nika, 124 Nev. at 1301, 198 P.3d at 858 (noting that that “bare” claims are insufficient to grant relief). Specifically, Maddox did not state what a more thorough investigation would have revealed or how it affected his decision to plead guilty. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Thus, the district court did not err by dismissing this claim without holding an evidentiary hearing.

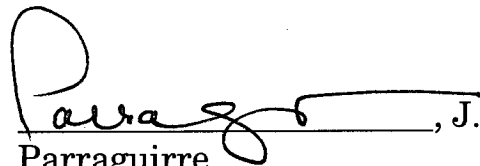
Maddox also claims that the district court erred by dismissing his claim that trial counsel failed to inform him of the right to a direct appeal and that counsel failed to file an appeal. A claim that counsel failed to perfect an appeal is a claim of ineffective assistance of counsel. See Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994). To prevail on an appeal deprivation claim based on ineffective assistance of counsel, the petitioner must demonstrate that counsel’s performance was deficient because it resulted in a breach of “counsel’s duty to inform and consult with the client regarding the right to appeal and counsel’s duty to file an appeal.” Toston v. State, 127 Nev. ___, ___, 267 P.3d 795, 799 (2011). When a defendant is convicted by guilty plea, counsel has no absolute duty to inform the defendant of the right to appeal. Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222 (1999). Here, the record demonstrates that the district court and the guilty plea agreement advised Maddox of his limited appellate rights. The district court found that Maddox failed to request an appeal and concluded that the record failed to demonstrate a “reasonable ground for appealing his guilty plea.” Thus, the district court concluded that counsel was under no obligation to file a notice of appeal. Because the district court’s factual findings are

supported by substantial evidence and are not clearly wrong, and the district court did not err as a matter of law, we conclude that the district court did not err by dismissing Maddox's petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Douglas, J.
Douglas


Gibbons, J.
Gibbons


Parraguirre, J.
Parraguirre

cc: Hon. Steven P. Elliott, District Judge
Story Law Group
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk