

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTOR J. SAHAGUN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63594

FILED

JAN 16 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his petition, filed on April 17, 2013, appellant raised several claims of ineffective assistance of trial counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). To prove prejudice to invalidate the decision to enter a guilty plea, a petitioner must demonstrate that there is a reasonable probability that, but for counsel's errors, 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, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697. Further, claims may not be bare but rather must be supported by specific factual allegations that, if true and not repelled by the record, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

First, appellant claimed that counsel Frank Kocka was ineffective for failing to investigate or to file a pretrial motion to suppress evidence. Appellant's bare claims failed to demonstrate deficiency or prejudice. Appellant did not state what a better investigation would have revealed or how it would have affected his guilty plea. *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Further, appellant did not provide any information as to the basis of the motion to suppress or its merit. See *Kirksey*, 112 Nev. at 990, 923 P.2d at 1109. We therefore conclude that the district court did not err in denying these claims.

Second, appellant claimed that counsel Jerry Donohue was ineffective for coercing appellant into signing the guilty plea agreement without appellant fully understanding the consequences. Appellant's bare claim failed to demonstrate deficiency or prejudice as he failed to state

how counsel coerced him or what he did not understand about the consequences of his plea agreement. Moreover, appellant acknowledged in his guilty plea agreement and during his plea colloquy that he was entering his plea freely and voluntarily and that he understood the maximum and minimum sentences possible. We therefore conclude that the district court did not err in denying this claim.

Third, appellant claimed that Mr. Donohue was ineffective for failing to negotiate a better plea deal where he knew the only evidence against appellant was the possession of "less than 14 grams" with no evidence of trafficking. Appellant's bare claim failed to demonstrate deficiency or prejudice as he failed to identify the better plea deal that he "felt" could be negotiated. The plea deal that appellant accepted was part of a global plea deal involving multiple defendants and was contingent upon each defendant accepting the negotiations. Moreover, appellant admitted during his plea canvass that he was in constructive possession of more than 5,800 grams of methamphetamine and approximately 10 kilograms of cocaine. We therefore conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that Mr. Donohue was ineffective for failing to present mitigation evidence at sentencing. Appellant failed to demonstrate deficiency or prejudice. Appellant's statement that he had reference letters from the community was a bare claim as he did not indicate the contents of the letters or how they would have affected the outcome of the sentencing hearing. Further, the district court was

apprised of his positive job history in the presentence investigation report. Appellant did not state what other representations counsel should have made. We therefore conclude that the district court did not err in denying this claim.

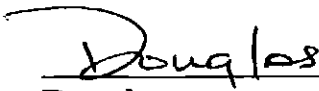
Appellant also claimed that he received ineffective assistance from appellate counsel. To prove ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal. *Kirksey*, 112 Nev. at 998, 923 P.2d at 1114. Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 751 (1983). Rather, appellate counsel will be most effective when every conceivable issue is not raised on appeal. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

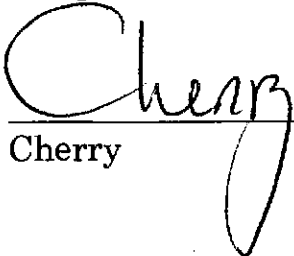
Appellant claimed that counsel was ineffective for failing to inform, advise, or communicate with him during the appeals process and that counsel failed to raise issues appellant wanted raised. Appellant's bare claims failed to demonstrate deficiency or prejudice. Appellant did not identify the issues he wanted raised on appeal; state what information would have been exchanged had counsel informed, advised, or communicated with him; nor demonstrate a reasonable probability of a different outcome on appeal had counsel raised the omitted issues or engaged in better communication. We therefore conclude that the district court did not err in denying these claims.

For the foregoing reasons, we conclude that appellant's claims lack merit, and we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Michelle Leavitt, District Judge
Victor J. Sahagun
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.