

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CRAIG ALLEN MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64383

FILED

JAN 21 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant argues that the district court erred in dismissing his claim of ineffective assistance of counsel from his August 18, 2011, post-conviction petition for a writ of habeas corpus without conducting an evidentiary hearing. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his 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, 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 v. Washington*, 466 U.S. 668, 697 (1984). To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific factual allegations that are not belied by the

record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).


Appellant argues that his counsel coerced his guilty plea by telling appellant that he would not be adjudicated a habitual criminal because of his medical condition. Appellant fails to demonstrate that his counsel's performance was deficient or that he was prejudiced. The guilty plea agreement, which appellant signed and acknowledged having read, informed appellant of the possible range of sentences, including the possibility of adjudication as a habitual criminal, and that the district court had the discretion as to appellant's ultimate sentence. In addition, appellant was informed at the plea canvass of the possible sentences, including sentencing as a habitual criminal, and that the district court maintained discretion over the appropriate sentence. Moreover, appellant acknowledged in the guilty plea agreement and at the plea canvass that he was not promised a lenient sentence by anyone, that he entered his guilty plea voluntarily, and that he did not act under duress or coercion. Appellant fails to demonstrate that he would have not pleaded guilty and would have insisted on going to trial had counsel had further discussions with him regarding the possibility of adjudication as a habitual criminal. Therefore, the district court did not err in dismissing this claim without conducting an evidentiary hearing.


Next, appellant argues that his plea was not entered knowingly and voluntarily because he suffered from elevated ammonia levels when he entered his guilty plea. Appellant fails to meet his burden to demonstrate that his plea was invalid. See *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). At the plea canvass, appellant informed the


district court that his ammonia levels were elevated, but stated that he understood the proceedings. Therefore, the district court did not err in dismissing this claim without conducting an evidentiary hearing.

Finally, appellant argues that his sentence amounts to cruel and unusual punishment and that the district court failed to review his medical records prior to imposing sentence. Appellant also appears to argue that he was not aware he committed a crime because he suffered from high ammonia levels during the incident. These claims were not based on an allegation that appellant's plea was involuntarily or unknowingly entered or that his plea was entered without effective assistance of counsel, and therefore, were not permissible in a post-conviction petition for a writ of habeas corpus stemming from a guilty plea. See NRS 34.810(1)(a). Accordingly, the district court did not err in dismissing these claims without conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Janet J. Berry, District Judge
Edward T. Reed
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk