

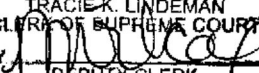
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICKEY MARKTWANNE THOMAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 65327

**FILED**

FEB 04 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

On appeal from the denial of his April 10, 2013, petition, appellant argues that the district court erred in denying his claim that his plea was not entered knowingly and voluntarily. Appellant asserts that he did not have sufficient time to discuss the plea offer with his family and that he believed he could withdraw the guilty plea at any time. Appellant fails to meet his burden to demonstrate that he did not enter a knowing and voluntary guilty plea. *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 evidentiary hearing, appellant's counsel testified that appellant discussed the plea offer with his family days before he signed the guilty plea agreement. Counsel also testified that he explained to appellant that when appellant signed the agreement, he was bound to the agreement.

In addition, appellant was informed in the guilty plea agreement of the range of penalties and of the rights he waived by entry of


his guilty plea. At the plea canvass, the trial court again informed appellant of the range of penalties and of the rights he waived by entering a guilty plea. The district court concluded that the totality of the circumstances demonstrated that appellant's guilty plea was valid, *see State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000), and substantial evidence supports that decision. Therefore, the district court did not err in denying this claim.

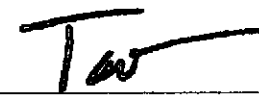
Next, appellant claimed that his trial counsel was ineffective for coercing his guilty plea. Appellant asserts that counsel coerced his plea by failing to ensure he had sufficient time to discuss the plea with his family and for telling him that he could withdraw his guilty plea at any time. To prove 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). 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).


Appellant fails to demonstrate that his counsel's performance was deficient or that he was prejudiced. At the evidentiary hearing, counsel testified that appellant discussed the plea deal with family

members days prior to signing the guilty plea agreement. Counsel also testified that he did not tell appellant he could withdraw his plea at any time. Appellant also acknowledged in both the plea agreement and at the plea canvass that he did not plead guilty under duress or due to threats. Appellant fails to demonstrate a reasonable probability that he would have refused to plead guilty and would have insisted on going to trial had counsel sought further discussions with appellant's family or discussed the guilty plea process with appellant in more detail. The district court concluded that counsel's testimony was credible and that appellant had failed to meet his burden to show that counsel was ineffective. Substantial evidence supports that decision. *See id.* Therefore, the district court did not err in denying this claim.

Having concluded that appellant is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge.  
Justice Law Center  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk