IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARMANDO CALZADA MENDOZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66357

FILED

JUL 1 4 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 denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Appellant Armando Calzada Mendoza argues the district court erred by denying his claims of ineffective assistance of counsel raised in his January 10, 2014, petition 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 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, 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 supported by specific allegations not belied by the record, and if true, would entitle him

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to relief. *Hargrove v. State,* 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Mendoza argues his counsel was ineffective for failing to file a motion to suppress Mendoza's confession. Mendoza asserts he is illiterate, uneducated, does not understand English, and counsel should have sought suppression of the confession on those bases. Mendoza fails to demonstrate his counsel's performance was deficient or resulting prejudice. Prior to entry of Mendoza's guilty plea, the district court inquired if there were any reasons for counsel to move to suppress the confession. Counsel responded that he had reviewed the interview, and Mendoza had voluntarily traveled to talk with the officers and had clearly desired to talk with the police. Given those circumstances, Mendoza does not demonstrate counsel's decision to decline to move to suppress the confession was objectively unreasonable. *See Casteel v. State,* 122 Nev. 356, 362, 131 P.3d 1, 4 (2006); *Mendoza v. State,* 122 Nev. 267, 276, 130 P.3d 176, 181 (2006).

Moreover, Mendoza did not include a transcript of his confession in the appendix before this court. As Mendoza is the appellant, it is his burden to provide this court with an adequate record for review, *see McConnell v. State,* 125 Nev. 256 n.13, 212 P.3d 307, 316 n.13 (2009), and thus, he fails to demonstrate there was a reasonable probability of a different outcome had counsel moved to suppress the confession. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Second, Mendoza argues his counsel was ineffective for permitting Mendoza to waive the preliminary hearing. Mendoza fails to demonstrate his counsel's performance was deficient or resulting

prejudice. Mendoza waived the preliminary hearing as a result of the plea negotiations. Mendoza does not identify what actions counsel should have performed differently regarding the preliminary hearing proceedings or how pursuing a preliminary hearing would have altered the outcome of the proceedings. Bare claims, such as this one, are insufficient to demonstrate a petitioner is entitled to relief. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.
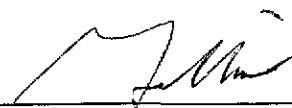
Third, Mendoza argues his counsel was ineffective because counsel called him disparaging names and stated that he hated working on these types of cases. Mendoza fails to demonstrate prejudice for this claim. Mendoza received a substantial bargain by entering a guilty plea. Mendoza was originally charged with eight felonies and had made incriminating statements to the police. The State agreed to reduce the charges to only two felonies in exchange for Mendoza's guilty plea. In addition, Mendoza stated in his petition that he did not learn of the meaning of counsel's statements until a fellow prisoner translated them for him at a later date. Accordingly, Mendoza fails to demonstrate these alleged statements had any bearing upon his decision to plead guilty. Thus, Mendoza fails to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel not uttered those alleged statements. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Fourth, Mendoza argues the cumulative effect of ineffective assistance of counsel warrants vacating his judgment of conviction. Mendoza fails to demonstrate any errors, even if considered cumulatively,

amount to ineffective assistance of counsel sufficient to warrant vacating the judgment of conviction. Therefore, he fails to demonstrate that he was entitled to relief for this claim.

Finally, Mendoza argues the trial court erred by questioning counsel at the arraignment regarding counsel's representation of Mendoza. This claim was not based on an allegation that Mendoza's guilty plea was involuntarily or unknowingly entered or that his plea was entered without effective assistance of counsel. Therefore, this claim was 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 denying this claim.

Having concluded Mendoza is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Jerome Polaha, District Judge
      Story Law Group
      Attorney General/Carson City
      Washoe County District Attorney
      Washoe District Court Clerk