

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT ANTHONY SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66812

**FILED**

**MAR 17 2015**

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

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In his May 8, 2014, petition, appellant claimed that defense counsel was ineffective. Appellant was convicted pursuant to a guilty plea. To state a claim of ineffective assistance of counsel sufficient to invalidate a guilty plea, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulted in 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); *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

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

Both components of this inquiry must be shown. *Strickland*, 466 U.S. at 697.

First, appellant claimed that counsel was ineffective for failing to investigate whether habitual criminal status applied to him. However, appellant was not adjudicated and sentenced as a habitual criminal in this case. Therefore, appellant failed to demonstrate that he was prejudiced by counsel's performance.

Second, appellant claims that counsel was ineffective for failing to investigate why the State took five years to prosecute this case.<sup>2</sup> However, appellant failed to identify what such an investigation would have uncovered and, therefore, failed to demonstrate that he was prejudiced by counsel's performance. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming that counsel did not conduct an adequate investigation must specify what a more thorough investigation would have uncovered).

Third, appellant claimed that counsel was ineffective for failing to disclose that he and the District Attorney's Office had changed the plea negotiations to which appellant had agreed. However, the record reveals that appellant signed the guilty plea agreement after consulting with counsel and the district court adequately canvassed appellant on his decision to plead guilty. During the plea canvass, appellant expressly acknowledged that the "[n]egotiations are the defendant is going to enter a guilty plea to battery by prisoner with intent to promote, further, or assist a criminal gang. State has agreed that they're going to retain the right to

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<sup>2</sup>The record demonstrates that the State initially charged appellant on December 10, 2007, appellant was bound over for trial on March 14, 2013, and appellant entered his guilty plea on March 28, 2013.


argue at time of sentencing.” This record belies appellant’s claim that the plea negotiations were secretly changed.


Appellant also claimed that his plea agreement was invalid because it was coerced and was obtained through promises that were not fulfilled. He asserted that he was promised that “if [he] took care of this detainer or hold, [his] prison points would go down and [he] could leave Ely State Prison.” However, the record belies appellant’s claim that the plea was coerced, and it is silent on his claim that he was promised prison points and a move in exchange for his guilty plea. Accordingly, appellant failed to carry his heavy burden to show that his plea was not entered knowingly and intelligently. *See id.* at 190, 87 P.3d at 537.

Finally, appellant claimed that the district court erred by failing to adequately inquire into his motion to substitute counsel. However, this claim was not properly raised in a post-conviction petition for a writ of habeas corpus that challenges the validity of a judgment of conviction that was entered upon a plea of guilty. *See* NRS 34.810(1)(a).

Having concluded that the district court did not err by denying appellant’s petition, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Valerie Adair, District Judge  
Robert Anthony Smith  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk