

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERRANCE RENDA MCCLODDEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66915

**FILED**

**APR 14 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.<sup>1</sup> Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

In his petition filed on August 28, 2014, appellant Terrance McClodden claimed that he received ineffective assistance of counsel. 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

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<sup>1</sup>This 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).

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).

First, McClodden claimed that counsel was ineffective for failing to conduct a thorough and proper investigation. Specifically, he claimed that counsel did not personally interview potential witnesses or investigate the background of the victims. McClodden failed to demonstrate that counsel was deficient or that he was prejudiced because he failed to support this claim with specific facts that, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claim.

Second, McClodden claimed that counsel was ineffective for failing to request tests from the State regarding gunshot residue on the victim's hands and for failing to do independent testing regarding gunshot residue. McClodden failed to demonstrate that counsel was deficient or that he was prejudiced. The record demonstrates that, at the time that McClodden decided to plead guilty, counsel was pursuing defenses and further discovery from the State. Further, McClodden failed to demonstrate a reasonable probability of a different outcome given the facts of the case. After an altercation with the victim, the victim retreated into his home and was closing the door when McClodden shot him. Therefore, whether the victim had previously shot a gun was immaterial and the district court did not err in denying this claim.

Third, McClodden claimed that counsel was ineffective for failing to have him evaluated for competency and for failing to investigate whether his mental illness could have been used in his defense.

McClodden failed to demonstrate that counsel was deficient or that he was prejudiced. McClodden failed to demonstrate that he was incompetent because he failed to demonstrate that he did not have the ability to consult with his attorney with a reasonable degree of rational understanding and that he did not have a rational and factual understanding of the proceedings against him. *See Melchor-Gloria v. State*, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) (citing *Dusky v. United States*, 362 U.S. 402, 402 (1960)). Further, McClodden failed to allege how his mental illness could have been used in his defense. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, the district court did not err in denying this claim.

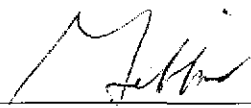
Next, McClodden claimed that his plea was invalid. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); *see also Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. *Hubbard*, 110 Nev. at 675, 877 P.2d at 521. In determining the validity of a guilty plea, this court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); *Bryant*, 102 Nev. at 271, 721 P.2d at 367.

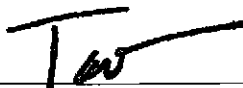
McClodden claimed that his plea was invalid because counsel failed to investigate, counsel coerced him into pleading by telling him if he did not plead guilty he would receive a sentence of life without the possibility of parole, and McClodden maintained his actions were in self-defense.

McClodden failed to demonstrate that his plea was invalid. As stated above, McClodden failed to demonstrate that counsel failed to investigate or what further investigation would have revealed. Counsel's candid advice about the outcome of trial and sentencing was not evidence of coercion and McClodden was canvassed by the district court regarding whether he was coerced into pleading guilty. Finally, we note that McClodden received a significant benefit by pleading guilty. He was originally charged with conspiracy to commit murder, first-degree murder with the use of a deadly weapon, attempted murder with the use of a deadly weapon, battery with the use of a deadly weapon, and discharging a firearm at or into a structure. He ultimately pleaded guilty to second-degree murder with the use of a deadly weapon and received a stipulated sentence of 10 to 25 years in prison with a consecutive sentence of 6 to 15 years in prison. Therefore, the district court did not err in denying this claim.

Having reviewed McClodden's claims and concluded they were without merit, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Douglas W. Herndon, District Judge  
Terrance Renda McClodden  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk