

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VINCE PEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66940

FILED

JUN 16 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.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.

In his petition filed on August 12, 2014, appellant Vince Perez argued that his guilty plea should be set aside because defense counsel failed to adequately advise him of its immigration consequences and he was unaware of these consequences at the time he pleaded guilty. Perez relies primarily on *Padilla v. Kentucky*, 559 U.S. 356 (2010), in which the Supreme Court held that the Sixth Amendment requires defense counsel to inform his or her client of the risk of deportation arising from a guilty plea.

“Following sentencing, a guilty plea may be set aside only to correct a manifest injustice.” *Baal v. State*, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990) (citing NRS 176.165). “A guilty plea entered on advice of

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude 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).

counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel. Manifest injustice may also be demonstrated by a failure to adequately inform a defendant of the consequences of his plea.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228-29 (2008) (footnote and internal quotation marks omitted). We review a district court’s manifest injustice determination for abuse of discretion but review claims of ineffective assistance of counsel de novo. *Id.* at 1039, 194 P.3d at 1229.

To state a claim of ineffective assistance of counsel sufficient to invalidate a guilty plea, the petitioner must demonstrate counsel’s performance was deficient because it fell below an objective standard of reasonableness, and resulted in prejudice such that there is a reasonable probability, but for counsel’s errors, the 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). The petitioner must prove the facts underlying his claims of ineffective-assistance by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004), and we need not address both prongs of the ineffective-assistance inquiry if the petitioner makes an insufficient showing on either one, *Strickland*, 466 U.S. at 697.


Perez did not present any evidence during the district court’s hearing on his habeas petition.² The district court made the following findings: (1) In the written plea agreement, Perez acknowledged “any

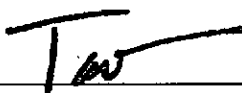
²Perez’s attorney proffered an affidavit, but the district court rejected it because Perez was not available for cross-examination.

criminal conviction will likely result in serious negative immigration consequences including . . . deportation” and counsel had thoroughly explained the consequences of the plea to him. (2) In a certificate attached to the plea agreement, defense counsel certified he had explained to Perez that “any criminal conviction will most likely result in serious negative immigration consequences including . . . deportation.” And (3) during the plea canvass, the hearing master asked Perez “[d]o you understand that if you’re not a United States citizen you may be deported based upon this guilty plea,” and Perez answered “yes.” The district court’s factual findings are supported by substantial evidence and are not clearly wrong.

We conclude that Perez failed to overcome the presumption that defense counsel was effective and fully discharged his duties, *see Davis v. State*, 107 Nev. 600, 602, 817 P.2d 1169, 1170 (1991), *overruled on other grounds by Means*, 120 Nev. at 1012-13, 103 P.3d at 33, and the district court did not abuse its discretion in determining there was no manifest injustice. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michael Villani, District Judge
Vince Perez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk