

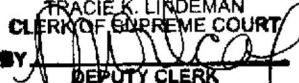
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL WAYNE CHRISTMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67154

FILED

APR 14 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
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; Stefany Miley, Judge.

In his petition filed on September 22, 2014, appellant Michael Wayne Christman claimed that counsel was ineffective and requested the appointment of counsel and an evidentiary hearing. To prevail on a claim of ineffective assistance of counsel, a petitioner must show that (1) counsel's performance was deficient because it fell below an objective standard of reasonableness and (2) the deficiency was prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996). A petitioner has no statutory right to counsel in a post-conviction proceeding, NRS 34.750(1); *McKague v. Whitley*, 112 Nev. 159, 163, 912 P.2d 255, 257 (1966), and he is only entitled to an evidentiary hearing if he has asserted specific factual

¹This 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 Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

allegations that are not belied or repelled by the record and that, if true, would entitle him to relief, NRS 34.770(1); *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008).

When reviewing the district court's resolution of ineffective-assistance claims, we give deference to the court's factual findings if they are 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, Christman claimed that counsel was ineffective for failing to conduct an adequate investigation before advising him to enter a guilty plea. However, the district court found that Christman failed to show that a better investigation had a reasonable probability of producing a more favorable outcome. The record supports this finding and we conclude that the district court did not err by denying this claim without an evidentiary hearing. *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).

Second, Christman claimed that counsel was ineffective for advising him to stipulate to habitual criminal treatment in the guilty plea agreement. Christman specifically argued that he was induced to plead guilty with promises of being sentenced under the small habitual criminal statute, that counsel colluded with the State by informing the district court that he could be sentenced under either the large or the small habitual criminal statutes, and that *Hodges v. State*, 119 Nev. 479, 78 P.3d 67 (2003), prohibits a defendant from stipulating to habitual criminal status. However, the district court found that the oral plea canvass and


the written guilty plea demonstrated that Christman understood that he could be sentenced under either the large or the small habitual criminal statutes and he acknowledged that no one made promises of leniency to secure his guilty plea. Counsel argued for a sentence under the small habitual criminal statute and for concurrent sentences. And Christman effectively stipulated to habitual criminal status because the district court thoroughly canvassed him regarding the stipulation before accepting his guilty plea, the State presented certified copies of his prior judgments of conviction, and Christman did not challenge the existence or constitutional validity of the prior judgments of conviction. The record supports these findings and we conclude that the district court did not err by denying this claim without an evidentiary hearing. See NRS 207.016(6); *Hodges*, 119 Nev. at 484-85, 78 P.3d at 70.

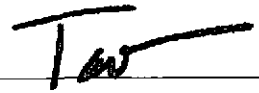
Christman also appears to claim that his plea agreement is invalid. We review a district court's ruling on the validity of a guilty plea for a clear abuse of discretion. *Johnson v. State*, 123 Nev. 139, 144, 159 P.3d 1096, 1098 (2007). The district court found that Christman acknowledged that he understood the charges against him, that he could be sentenced under the large habitual criminal statute, and the rights that he was relinquishing during the plea canvass. The district court further found that Christman stated that he was pleading freely and voluntarily and acknowledged that he read and understood the contents of the written guilty plea agreement. And the district court concluded that Christman's claim that he entered the plea agreement "unknowingly" was belied by the record. The record on appeal supports the district court's findings, and we conclude that the district court did not clearly abuse its discretion in this


regard. See NRS 176.165; *Molina*, 120 Nev. at 190, 87 P.3d at 537 (defendant bears the burden of proving that his plea is invalid).

Having concluded that the district court did not err by denying Christman's petition, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Stefany Miley, District Judge
Michael Wayne Christman
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We have reviewed all documents that Christman has submitted to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted.