

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD RAY DELONEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67383

FILED

JUL 14 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court quashing a post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Appellant Donald Deloney argues the district court erred in denying his claims of ineffective assistance of counsel raised in his January 29, 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 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, 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 that are not belied by the record, and if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Deloney claims trial counsel was ineffective for failing to hire an expert to review the surveillance video or to interview the witnesses who identified him in the video. Deloney fails to demonstrate trial counsel was deficient or resulting prejudice because he fails to support this claim with specific facts that, if true, would entitle him to relief. *Id.* He fails to demonstrate what opinion an expert could have given regarding the video or what the witnesses would have revealed had they been interviewed. Therefore, he fails to demonstrate a reasonable probability that he would not have pleaded guilty, and the district court did not err in denying this claim without an evidentiary hearing.


Second, Deloney claims trial counsel was ineffective because counsel failed to inform him that he was facing a consecutive sentence for the deadly weapon enhancement or that he could receive more than the minimum required sentence. Deloney's claim that counsel failed to inform him that he was facing a consecutive sentence is belied by the record. At the change of plea hearing, the State clarified on the record that Deloney was facing a consecutive sentence for the deadly weapon enhancement. Trial counsel then affirmed that he had discussed this with Deloney and that Deloney understood. Further, it was explained in the guilty plea agreement what the minimum and maximum sentences were for robbery with the use of a deadly weapon. The district court explained to Deloney what the maximum possible sentence was and the district court could impose the maximum sentence. Deloney indicated he understood the district court and had read and understood the plea agreement. Therefore, the district court did not err in denying this claim without an evidentiary hearing.

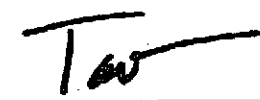
Finally, Deloney claims trial counsel was ineffective for failing to discuss the pre-sentence interview with him and failing to discuss how the presentence report would be used at sentencing. Specifically, Deloney

claims he did not know his statement could be used against him or that he had the right to remain silent. Deloney fails to demonstrate trial counsel was deficient or resulting prejudice. Deloney was informed in the guilty plea agreement the presentence report would be used in deciding his sentence. Moreover, the only time Deloney's statement was mentioned at sentencing was by Deloney's counsel in his argument requesting a reduced sentence based on Deloney's mental health and drug use and his remorse for having committed the crime. Therefore, he fails to demonstrate a reasonable probability that he would not have pleaded guilty or a reasonable probability of a different outcome at sentencing had his counsel discussed the interview with him. Accordingly, the district court did not err in denying this claim without an evidentiary hearing.

Having reviewed Deloney's claims and concluded they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Robert W. Lane, District Judge
David H. Neely, III
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk