

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW J. SILVA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67681

**FILED**

AUG 05 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; Michelle Leavitt, Judge.

In his petition filed on December 18, 2014, appellant Matthew Silva claimed defense counsel was ineffective and requested an evidentiary hearing.

We review the district court's resolution of ineffective-assistance claims de novo, giving deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). To state a meritorious claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must allege specific facts that show (1) counsel's performance was deficient in that it fell below an objective standard of reasonableness and

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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 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).

(2) a reasonable probability, but for counsel's errors, he 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, 988, 923 P.2d 1102, 1107 (1996).

The district court considered the pleadings, transcripts, and documents on file and made the following findings: (1) Silva's claims that counsel was ineffective for not retesting Silva's blood samples, failing to file a motion for an evidentiary hearing or a petition for a writ of mandamus regarding the State's *Marcum* notice,<sup>2</sup> and failing to file a motion alleging the grand jury process constituted an abuse of the State's power were not cognizable under NRS 34.810(1)(a). (2) Silva failed to show he entered his plea without effective assistance of counsel. And (3) Silva's appeal deprivation claim is without merit because it does not contain any allegations that he inquired about the right to an appeal or identify circumstances in which he may have benefitted from advice on the right to an appeal.

Our review of the record reveals the district court's factual findings are supported by substantial evidence and are not clearly wrong. We conclude Silva's claims were either procedurally barred or meritless on their face and therefore the district court did not err by denying his petition without an evidentiary hearing.<sup>3</sup> See NRS 34.810(1)(a) (limiting

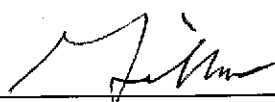
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<sup>2</sup>*Sheriff v. Marcum*, 105 Nev. 824, 783 P.2d 1389 (1989), amended 790 P.2d 497 (1990).

<sup>3</sup>To the extent Silva also challenged the validity of his guilty plea and claimed he was entitled to relief based on counsel's cumulative errors, we conclude Silva failed to demonstrate the withdrawal of his guilty plea is necessary to correct a manifest injustice and any deficiencies in counsel's performance to cumulate. See NRS 176.165; *McConnell v. State*,  
*continued on next page...*

the scope of claims that may be raised when a conviction is based on a guilty plea); *Toston v. State*, 127 Nev. \_\_\_, \_\_\_, 267 P.3d 795, 799-800 (2011) (discussing the limited circumstances in which trial counsel has a constitutional duty to inform a client who has pleaded guilty about a direct appeal); *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008) (explaining that a petitioner is only entitled to an evidentiary hearing if he has asserted specific factual allegations that are not belied or repelled by the record and, if true, would entitle him to relief). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

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

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

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

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*...continued*

125 Nev. 243, 259 n.17, 212 P.3d 307, 318 n.17 (2009); *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008).

<sup>4</sup>We have reviewed all documents Silva has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Silva has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.

cc: Hon. Michelle Leavitt, District Judge  
Matthew J. Silva  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk