

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EVERARDO MATA-ZUNIGA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67778

FILED

AUG 05 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 denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

In his December 9, 2014, petition, appellant Everardo Mata-Zuniga claimed his counsel was ineffective. 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

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).

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components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984).


First, Mata-Zuniga claimed his counsel was ineffective for failing to sufficiently communicate or ensure Mata-Zuniga received Spanish-language interpretation of the proceedings. Mata-Zuniga failed to demonstrate his counsel's performance was deficient or resulting prejudice. Mata-Zuniga acknowledged in the written plea agreement and at the plea canvass that he had discussed the case with his counsel and stated at the plea canvass that he had no further questions for his counsel. Further, Mata-Zuniga's assertion regarding interpretation is belied by the record because an interpreter was present at the court hearings and the parties used a Spanish-language written guilty plea agreement. Mata-Zuniga failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on trial had he had further discussions with his counsel. Therefore, the district court did not err in denying this claim.


Second, Mata-Zuniga claimed his counsel was ineffective for failing to familiarize himself with the case, prepare for the sentencing hearing, or call mitigation witnesses at the sentencing hearing. Mata-Zuniga failed to demonstrate either deficiency or prejudice for this claim. Mata-Zuniga failed to identify any facts to support this claim. A bare claim, such as this one, is insufficient to demonstrate a petitioner is entitled to relief. *See 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.

Third, Mata-Zuniga claimed his counsel was ineffective for failing to correct errors within the presentence investigation report (PSI).

Mata-Zuniga failed to demonstrate his counsel's performance was deficient or resulting prejudice. Mata-Zuniga did not identify any errors in the PSI and a bare claim, such as this one, is insufficient to demonstrate a petitioner is entitled to relief. *See id.* Moreover, Mata-Zuniga received the sentence he agreed to in the guilty plea agreement, and therefore, he failed to demonstrate a reasonable probability of a different outcome had counsel sought changes to the PSI. Therefore, the district court did not err in denying this claim.

Having concluded Mata-Zuniga is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas W. Herndon, District Judge
Everardo Mata-Zuniga
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk