

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARL ERIC KREHNOVI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67856

**FILED**

**OCT 20 2015**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY Young  
DEPUTY CLERK

*ORDER OF REVERSAL AND REMAND*

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Appellant Carl Krehnovi filed a timely petition on September 17, 2013. In the petition, Krehnovi claimed defense counsel was ineffective for failing to properly investigate his case before advising him to plead guilty and his guilty plea was invalid due to counsel's ineffectiveness. The district court denied the petition without conducting an evidentiary hearing. We conclude the district court abused its discretion in this regard.

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 prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). A petitioner is entitled to an evidentiary hearing if he "asserts specific factual allegations that are not belied or repelled by the record and that, if true, would entitle him to relief." *Nika v. State*, 124 Nev. 1272, 1301, 198 P.3d 839, 858 (2008). "A claim is 'belied' when it is contradicted


or proven false by the record as it existed at the time the claim was made.” *Mann v. State*, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). “We review the district court’s determination that a petitioner is not entitled to an evidentiary hearing for abuse of discretion.” *Stanley v. Schriro*, 598 F.3d 612, 617 (9th Cir. 2010).


In his petition, Krehnovi alleged he asked counsel to interview Shawn Kelly because Kelly witnessed the entire incident, Kelly was the victim’s friend, and Kelly knew the victim had a history of domestic violence against her family members. Krehnovi alleged an interview of this witness would have revealed he acted in self-defense when he struck the victim in the nose and his only means of escape from the victim’s attack was to exit the car when it stopped at a stop light. Krehnovi alleged counsel ignored his request to interview Kelly, and he asserted that his guilty plea was not knowingly, voluntarily, and intelligently entered because counsel led him to believe the case was indefensible.

The record does not belie or repel Krehnovi’s allegations and, if true, these allegations would entitle Krehnovi to relief. “[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691. If counsel failed to make a reasonable investigation or a reasonable decision not to investigate, then counsel was ineffective and his ineffectiveness rendered Krehnovi’s guilty plea invalid. *See Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008) (“A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel.”). Accordingly, we conclude the district court abused its discretion in determining Krehnovi was not entitled to an evidentiary hearing, and we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court with instructions to conduct an evidentiary hearing on Krehnovi's failure-to-investigate claim and to allow Krehnovi to withdraw his guilty plea if it is found to be invalid.<sup>1</sup>

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

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

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

cc: Hon. William D. Kephart, District Judge  
Nguyen & Lay  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.