

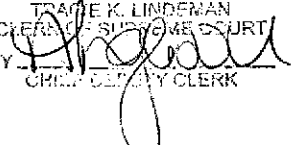
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY LAVELLE MAYS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 68295

FILED

DEC 18 2015

TRACE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his petition filed on April 2, 2015, appellant Gregory Mays claimed he received ineffective assistance of counsel. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate 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

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<sup>1</sup>This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

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). We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the district 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, Mays claimed counsel was ineffective for failing to discuss the elements of the charges and defenses before allowing him to plead guilty. This claim is belied by the record because Mays signed his plea agreement and, by signing the agreement, he acknowledged he and counsel had discussed the elements and defenses. Therefore, the district court did not err in denying this claim.

Second, Mays claimed counsel was ineffective for advising him to plead guilty when the victim was not credible. Mays failed to demonstrate counsel was deficient or resulting prejudice. Mays knew the victim and would have been able to judge her credibility. Further, he fails to demonstrate a reasonable probability he would not have pleaded guilty given the substantial benefit he received by pleading guilty. Mays was originally charged with two counts of sexual assault and two counts of battery with intent to commit sexual assault. He agreed to plead guilty to

battery causing substantial bodily harm and stipulate to a sentence of 12 to 30 months. Therefore, the district court did not err in denying this claim.

Third, Mays claimed counsel was ineffective for failing to file a motion to withdraw his guilty plea. Mays claimed he made several requests at different court hearings that he wanted to withdraw his plea. This claim is not supported by the record. Mays was only in court twice on this case: once to enter his plea and once to be sentenced. The record does not demonstrate he asked to withdraw his plea at either hearing and he does not allege that he requested counsel to withdraw his plea at sentencing. Therefore, the district court did not err in denying this claim.

Fourth, Mays claimed counsel was ineffective for failing to file a direct appeal from his judgment of conviction. Mays failed to demonstrate counsel was deficient. “[T]rial counsel does not have a constitutional duty to always inform his client of, or consult with his client about, the right to a direct appeal when the client has been convicted pursuant to a guilty plea.” *Toston v. State*, 127 Nev. 971, 977, 267 P.3d 795, 799 (2011). The duty only arises “when the defendant inquires about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the right to a direct appeal.” *Id.*


Pursuant to the guilty plea agreement, Mays waived his right to file a direct appeal, “including any challenge based upon reasonable

constitutional, jurisdictional or other grounds.” Further, Mays does not claim he asked trial counsel to file an appeal and trial counsel refused. Therefore, the district court did not err in denying this claim.

Finally, Mays claimed his arrest and conviction were based on an unlawful search and seizure. This claim was outside the scope of a postconviction petition challenging a judgment of conviction based upon a guilty plea. See NRS 34.810(1)(a). Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

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<sup>2</sup>We conclude the district court did not abuse its discretion by denying Mays’ motion for the appointment of counsel. See NRS 34.750(1).

cc: Hon. Michelle Leavitt, District Judge  
Gregory Lavelle Mays  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk