

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY EUGENE MARTINEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 68134

FILED

DEC 18 2015

TRACIE K. LIPPENMAN  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
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; Douglas Smith, Judge.

In his petition filed on February 19, 2015, appellant Anthony Martinez 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 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). We give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those

<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).

facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Martinez claimed counsel was ineffective for failing to investigate the value of the property he took. Martinez failed to demonstrate deficiency because he failed to demonstrate further investigation would have revealed that the property was worth less than \$650. Further, Martinez was originally charged with four felonies and a gross misdemeanor. Only one of those felonies required a showing that the value of the property was worth more than \$650. In exchange for his plea, the State agreed to allow Martinez to plead to only one felony, to dismiss the other charges, and to dismiss another pending case. Therefore, Martinez failed to demonstrate resulting prejudice because he failed to demonstrate a reasonable probability he would not have pleaded guilty had further investigation been done. Accordingly, the district court did not err in denying this claim.

Second, Martinez claimed counsel was ineffective for failing to investigate his competency. Martinez claimed he suffered brain damage from his boxing career and he was taking Zoloft and Trazodone at the time of his plea. Martinez failed to demonstrate counsel was deficient because he failed to demonstrate he did not have the ability to consult with his attorney with a reasonable degree of rational understanding and he did not have a rational and factual understanding of the proceedings against him. *See Melchor-Gloria v. State*, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) (citing *Dusky v. United States*, 362 U.S. 402, 402 (1960)). Therefore, the district court did not err in denying this claim.

Third, Martinez claimed counsel was ineffective for failing to discuss any potential defenses. Specifically, he claimed counsel did not discuss a defense of arguing that the property was worth less than \$650. This claim is belied by the record because Martinez signed the plea

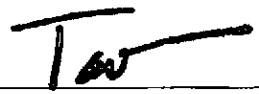
agreement which stated he had discussed all potential defenses and reaffirmed that during the plea colloquy. Therefore, the district court did not err in denying this claim.

Fourth, Martinez claimed counsel was ineffective for coercing him into pleading guilty. Specifically, he claimed counsel told him he would be convicted if he went to trial, he was facing the large habitual criminal enhancement, and his sentences could be run consecutive. Martinez failed to demonstrate counsel was deficient because counsel is not deficient for giving candid advice about the likely outcome of trial. Therefore, the district court did not err in denying this claim.

Finally, Martinez claimed counsel was ineffective for failing to discover and secure mitigating evidence to explain or rationalize his behavior. Martinez failed to support this claim with specific facts that, if true, would entitle him 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. 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 also conclude the district court did not abuse its discretion by denying Martinez's motion to appoint counsel. *See* NRS 34.750(1).

cc: Hon. Douglas Smith, District Judge  
Anthony Eugene Martinez  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk