

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RODOLFO RASMUSSEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69489

FILED

APR 20 2016

TRONIEK LINDEMAN
CLERK OF SUPREME COURT
[Signature]
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.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant Rodolfo Rasmussen argues the district court erred in denying his claims of ineffective assistance of counsel raised in his August 27, 2015, petition. 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

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

16-900443

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

First, Rasmussen argues his counsel was ineffective for failing to sufficiently communicate with him. Rasmussen fails to demonstrate his counsel's performance was deficient or resulting prejudice. Rasmussen does not demonstrate counsel was deficient because he acknowledged in the guilty plea agreement he had discussed possible defenses with counsel and he was satisfied with the services provided by counsel. Rasmussen fails to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel communicated further with him. Therefore, the district court did not err in denying this claim.

Second, Rasmussen argues his counsel was ineffective for failing to investigate Rasmussen's confession. Rasmussen asserts counsel would have discovered his statements were made under duress and that Rasmussen was under the influence of narcotics at that time. Rasmussen fails to demonstrate his counsel's performance was deficient or resulting prejudice.

Rasmussen did not allege and the record does not reveal he informed his counsel of these issues prior to entry of his guilty plea. If counsel was not made aware of Rasmussen's duress or intoxication, counsel cannot have reasonably been expected to investigate these issues. *See Riley v. State*, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994) (concluding counsel was not ineffective for failing to investigate statements when he was not informed of those statements ahead of trial). Moreover, given the

facts of the crime and the record before this court regarding Rasmussen's confession,² Rasmussen fails to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel conducted further investigation into these issues. See *Gonzales v. State*, 131 Nev. ___, ___ n.2, 354 P.3d 654, 659 n.2 (Ct. App. 2015) (explaining intoxication is insufficient to "render a confession involuntary when the totality of the circumstances indicate that the statements were voluntary."). Therefore, the district court did not err in denying this claim.

Third, Rasmussen argues his counsel was ineffective for failing to meaningfully investigate the case. Rasmussen asserts counsel did not investigate possible defenses, discover evidence showing the firearms actually belonged to his codefendant, or discover that the only evidence linking Rasmussen to the firearms was his codefendant's untruthful statements. Rasmussen fails to demonstrate his counsel's performance was deficient or resulting prejudice.


Rasmussen does not identify any possible defenses counsel could have uncovered. Rasmussen also does not explain how counsel could have discovered evidence that the firearms belonged to his codefendant or that her statements regarding this matter were untruthful, particularly in


²The record before this court shows Rasmussen's confession occurred in a hospital as he recovered from injuries sustained from the car accident that led to the discovery of the firearms. The interviewing officer testified before the grand jury that Rasmussen voluntarily discussed his involvement in this matter in an effort to become an informant for the police. The officer stated Rasmussen confessed that he and his codefendant possessed the firearms because they intended to rob a number of houses where drugs were offered for sale.


light of Rasmussen's confession. As Rasmussen does not demonstrate an investigation would have uncovered favorable evidence, he does not meet his burden to demonstrate this claim has merit. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming counsel did not conduct an adequate investigation must specify what a more thorough investigation would have uncovered). Therefore, the district court did not err in denying this claim.

Next, Rasmussen argues the district court erred by declining to appoint postconviction counsel to represent him. The appointment of postconviction counsel was discretionary in this matter. *See* NRS 34.750(1). The district court reviewed Rasmussen's petition and concluded the issues presented were not complex enough so as to warrant the appointment of postconviction counsel. After a review of the record before this court, we conclude the district court did not abuse its discretion in this regard. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Valerie Adair, District Judge
Rodolfo Rasmussen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk