

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAURO AMADOR-OJEDA, A/K/A
MAURO AMADOROJEDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69540

FILED

OCT 19 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus appellant Mauro Amador-Ojeda filed on August 27, 2015.¹ Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Amador-Ojeda claimed defense counsel was ineffective for misleading him about the potential sentences for his crimes, misinforming him about the immigration consequences of pleading guilty, rushing him into signing the plea agreement, and failing to inform him about his right to file an appeal.

To prevail on a claim of ineffective assistance of counsel, a petitioner must show (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

¹This 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).

(1984). To demonstrate prejudice sufficient to invalidate a judgment of conviction based on a guilty plea, the petitioner must show that, but for trial counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the ineffective-assistance inquiry—deficiency and prejudice—must be shown. *Strickland*, 466 U.S. at 697. We review the district court's resolution of ineffective-assistance claims de novo, giving deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

The district court made the following findings: Amador-Ojeda failed to allege specific facts supporting his appeal deprivation claim. The guilty plea agreement and plea canvass plainly informed Amador-Ojeda of the charges, potential sentences, and possible immigration consequences. Amador-Ojeda received the guilty plea agreement on January 6, 2015, and did not sign it until February 2, 2015. And Amador-Ojeda did not allege he wanted to proceed to trial but rather indicated he would like to retain the benefits of the guilty plea agreement but also receive a reduced sentence and/or removal to Mexico.

The district court's findings are supported by the record and we conclude the district court did not err by denying Amador-Ojeda's ineffective-assistance-of-counsel claims. See *Toston v. State*, 127 Nev. 971, 977, 267 P.3d 795, 799 (2011); *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004); *Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

Amador-Ojeda also claimed his guilty plea was not entered knowingly and voluntarily because it was induced by defense counsel's misrepresentations regarding his potential prison sentences, the possibility of reduced and suspended sentences, and his immediate removal to Mexico.

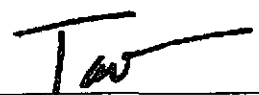
After sentencing, a district court may permit a petitioner to withdraw a guilty plea where necessary "[t]o correct manifest injustice." NRS 176.165. "A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel." *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008). "[We] will not overturn the district court's determination on manifest injustice absent a clear showing of an abuse of discretion." *Id.* at 1039, 194 P.3d at 1229 (internal quotation marks omitted).

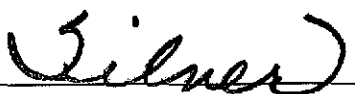
The district court found Amador-Ojeda read and signed the guilty plea agreement in which he stipulated to the sentence he actually received, acknowledged his conviction would likely result in serious negative immigration consequences, and agreed he was not acting under duress or coercion and was not under the influence of intoxicating liquor or drugs that would impair his ability to understand the agreement and the proceedings surrounding the entry of his guilty plea. The district court further found Amador-Ojeda was canvassed regarding the guilty plea agreement during the hearing on his unconditional waiver of preliminary hearing and at his initial arraignment.

The district court's findings are supported by the record and we conclude Amador-Ojeda failed to demonstrate manifest injustice. Accordingly, the district court did not err by denying this claim.

Having concluded Amador-Ojeda is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Jessie Elizabeth Walsh, District Judge
Mauro Amador-Ojeda
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We note some of Amador-Ojeda's claims related to another case and the district court declined to consider those claims for lack of jurisdiction. We conclude the district court did not err in this regard, and we further conclude the district court did not err in denying Amador-Ojeda's petition without appointing counsel or conducting an evidentiary hearing. See NRS 34.750.750(1); NRS 34.770(2).