

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK MARQUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70780

FILED

DEC 14 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Frank Marquez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 17, 2015. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Marquez argues the district court erred in denying his claim of 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); see also *State v. Lewis*, 124 Nev. 132, 134 n.1, 178 P.3d 146, 147 n.1 (2008) (noting *Alford*¹ plea is equivalent to a guilty plea insofar as how the court treats a defendant). Both components of the inquiry must be shown. *Strickland v.*

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).

Washington, 466 U.S. 668, 697 (1984). To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations that are not belied by the record, and if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008).

Marquez argued his counsel was ineffective for informing him his plea to coercion would be treated as a nonviolent offense. Marquez failed to demonstrate his counsel's performance was deficient or resulting prejudice. In the written plea agreement, Marquez agreed to enter an *Alford* plea to the charge of attempted coercion as alleged in the attached information. The information alleged Marquez attempted to use physical force or the immediate threat of physical force, in the form of attempting to strike the victim in the chest or chest bumping her, in order to prevent the victim from leaving an apartment. Marquez acknowledged in the written plea agreement he had discussed the elements of the charge against him with his counsel and that those elements had been explained to him. Accordingly, Marquez acknowledged in the written plea agreement that he understood the State alleged he committed a violent act and he agreed to enter an *Alford* plea regarding those allegations.

Moreover, during the plea canvass, the State asserted it would prove at trial that Marquez violently grabbed the victim and wrestled her as she attempted to move away from Marquez. The State asserted Marquez then strangled, punched, and hit the victim during the incident. The State further asserted Marquez forced the victim, through physical violence and verbal threats, to create a memo asserting Marquez had not forcibly detained her. Marquez then acknowledged this evidence, asserted he was not contesting it, and agreed to enter the *Alford* plea.

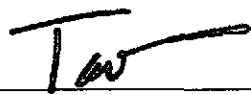
Given the record before this court, Marquez failed to demonstrate counsel informed him this offense would be considered to be

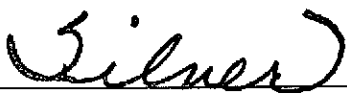
nonviolent. Considering the circumstances in this case and the potential penalties² Marquez would have faced had he rejected the State's plea offer, Marquez failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel explained his offense would be considered a violent offense. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Next, Marquez argued the district court imposed an illegally excessive sentence. This claim was not based on an allegation that Marquez's plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel, and therefore, was not permissible in a postconviction petition for a writ of habeas corpus stemming from a guilty plea entered pursuant to *Alford*. See NRS 34.810(1)(a). Therefore, the district court did not err in denying relief for this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

²We note Marquez was initially charged with battery constituting domestic violence involving strangulation, battery constituting domestic violence, burglary in possession of a firearm, second-degree kidnapping, and coercion.

cc: Hon. Douglas Smith, District Judge
Matthew D. Carling
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk