

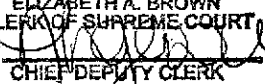
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFF ALLEN BROWN, A/K/A JEFF  
ALAN BROWN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70399

**FILED**

MAR 22 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Appellant Jeff Allen Brown appeals 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; Jennifer P. Togliatti, Judge.

In his February 18, 2016, petition, Brown claimed his counsel was ineffective. 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the

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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).

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

First, Brown claimed his counsel was ineffective for failing to properly investigate and file a pretrial motion to dismiss. Brown failed to demonstrate either deficiency or prejudice for this claim because he did not identify any issues counsel should have investigated or any bases upon which counsel should have pursued a motion to dismiss. A bare claim, such as this one, is insufficient to demonstrate a petitioner is entitled 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.

Second, Brown appeared to claim counsel was ineffective for causing Brown to believe, in exchange for entry of his guilty plea, he would serve his sentence on house arrest or probation and that his felony conviction would be reduced to a gross misdemeanor. Brown failed to demonstrate his counsel's performance was deficient or resulting prejudice. In the written plea agreement and at the plea canvass, Brown was informed he would serve house arrest while on bail pending sentencing and Brown acknowledged his understanding of that term. In the written plea agreement and at the plea canvass, Brown further acknowledged he understood he had not been promised a particular sentence, his sentence was to be determined by the district court, and whether he would receive probation was within the discretion of the district court. Moreover, Brown acknowledged in both the written plea agreement and at the plea canvass he was pleading guilty to felony coercion, and not to a gross misdemeanor. Finally, Brown acknowledged in the written plea agreement he had discussed the agreement with counsel and counsel had thoroughly explained the agreement to him.

Under these circumstances, Brown failed to demonstrate counsel acted in an objectively unreasonable manner with respect to explaining the consequences of Brown's guilty plea. Brown also failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel further explained these issues. Therefore, the district court did not err in denying this claim.<sup>2</sup>

Third, Brown claimed his counsel was ineffective for failing to ensure he received credit against his sentence for time spent on house arrest. Brown cannot demonstrate either deficiency or prejudice for this claim because "house arrest does not constitute time actually spent in confinement for which the duration of a sentence may be credited." *State v. Second Judicial Dist. Court (Jackson)*, 121 Nev. 413, 418-19, 116 P.3d 834, 837 (2005) (internal quotation marks omitted). Therefore, the district court did not err in denying this claim.


Fourth, Brown appeared to claim his counsel was ineffective for failing to properly explain his right to a direct appeal. Brown failed to demonstrate his counsel provided ineffective assistance. The duty to inform or consult with a client with respect to appealing a judgment of conviction based on a guilty plea only arises "when the defendant inquires


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<sup>2</sup>Brown also appeared to assert he should be entitled to withdraw his guilty plea because it was not knowingly and voluntarily entered due to his misunderstanding regarding his ability to receive house arrest or probation and the reduction of his felony conviction to a gross misdemeanor. Because Brown received the proper information regarding these issues in the written plea agreement and at the plea canvass, he failed to demonstrate withdrawal of his plea was necessary to correct a manifest injustice. See NRS 176.165.

about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the right to a direct appeal.” *Toston v. State*, 127 Nev. 971, 977, 267 P.3d 795, 799 (2011). Brown did not claim he inquired about a direct appeal or that there were any circumstances in which he would have benefited from receiving advice regarding a direct appeal. *See id.* Further, Brown specifically waived his right to appeal in the written plea agreement. Therefore, we conclude the district court did not err in denying this claim.

Having concluded Brown is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Jennifer P. Togliatti, District Judge  
Jeff Allen Brown  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk