

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DWANVAE WILBERT PEARSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71112

FILED

MAY 17 2017

ELIZABETH A. BROWN
CLERK OF THE COURT
BY: *A. Walsh*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Dwanvae Wilbert Pearson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Pearson argues the district court erred in denying his claims of ineffective assistance of counsel raised in his March 17, 2016, petition. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate 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,

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

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923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984).

First, Pearson argued his counsel was ineffective for failing to investigate the BB gun used in the commission of the crimes because counsel would have discovered the BB gun was not a deadly weapon. Pearson also asserts counsel improperly advised him to plead guilty to the deadly weapon enhancement when the BB gun should not have qualified for that enhancement. Pearson failed to demonstrate his counsel's performance was deficient or resulting prejudice.

The record demonstrates that the BB gun used in the commission of the crimes met the statutory definition of a deadly weapon. See NRS 193.165(6)(c); 2007 Nev. Stat., ch. 418, § 1, at 1913-14 (former NRS 202.265); NRS 202.290. Accordingly, Pearson failed to demonstrate an objectively reasonable counsel would have investigated this issue or asserted the BB gun was not a deadly weapon when discussing the guilty plea with Pearson. Pearson failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel made additional arguments regarding the deadly weapon enhancement as the record demonstrated the codefendants threatened the victims in this matter with the BB gun in order to complete the robberies. See NRS 193.165(6)(b). Therefore, the district court did not err in denying this claim.


Second, Pearson argued his counsel was ineffective for manipulating, coercing, and rushing him into entering a guilty plea. Pearson failed to demonstrate his counsel's performance was deficient or resulting prejudice. Pearson made only a bare claim and provided no


factual support for this claim. Bare claims, such as this one, are insufficient to demonstrate a petitioner is entitled to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). In addition, Pearson acknowledged in the written plea agreement that he did not enter his guilty plea under duress or coercion. Accordingly, Pearson failed to demonstrate his counsel acted in an objectively unreasonable manner. Pearson also failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel acted in a different manner. Therefore, the district court did not err in denying this claim.


Next, Pearson argues the district court erred in declining to appoint postconviction counsel to represent him. The appointment of postconviction counsel was discretionary in this matter. *See NRS 34.750(1)*. After a review of the record, we conclude the district court did not abuse its discretion in this regard as this matter was not sufficiently complex so as to warrant the appointment of postconviction counsel.

Finally, Pearson argues the district court erred in declining to conduct an evidentiary hearing. 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, 194 P.3d 1224, 1233-34 (2008). The district court concluded Pearson's claims were not supported by specific allegations that would have entitled him to relief if true, and the record before this court reveals the district court's conclusions in this regard were proper. Therefore, the district court properly denied the petition without conducting an evidentiary hearing.

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Jessie Elizabeth Walsh, District Judge
Dwanvae Wilbert Pearson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We have reviewed all documents Pearson has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Pearson has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.