

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALMANDRE SHAMARI MEEKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71711

FILED

AUG 16 2017

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

ORDER OF AFFIRMANCE

Almandre Shamari Meeks 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; Joseph T. Bonaventure, Senior Judge.

Meeks argues the district court erred in denying his claims of ineffective assistance of counsel raised in his June 29, 2016, petition. To prove ineffective assistance of counsel, a petitioner must demonstrate 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, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must demonstrate a reasonable probability, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.

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

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 the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

First, Meeks argued his counsel was ineffective for failing to investigate his mental health or request he undergo a competency evaluation. Meeks failed to demonstrate his counsel's performance was deficient or resulting prejudice. Meeks only made bare allegations supporting this claim and did not demonstrate counsel would have uncovered evidence to support this claim had counsel investigated Meeks' mental health. 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). In addition, Meeks did not provide evidence to support an assertion he was incompetent during the trial-level proceedings because he failed to show he did not have the ability to consult with his attorney with a reasonable degree of rational understanding and that he did not have a rational and factual understanding of the proceedings against him when he entered his guilty plea. See *Melchor-Gloria v. State*, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983). Because Meeks did not provide support for his claim, he failed to demonstrate his counsel acted in an objectively unreasonable manner regarding this issue or a reasonable probability of a different outcome had counsel investigated his mental health or sought a competency evaluation. Therefore, we conclude the district court did not err in denying this claim.

Second, Meeks argued his counsel was ineffective for failing to object when the State amended his charge from larceny from a person to robbery. Meeks also asserted his counsel should have argued the facts of

his case did not meet the elements of a robbery charge. Meeks failed to demonstrate his counsel's performance was deficient or resulting prejudice. Meeks' claims were belied by the record. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). The record demonstrated the State initially charged Meeks with robbery; the charge was not amended from an initial charge involving larceny. Further, the record indicated Meeks forcibly took the personal property of an elderly woman. Such allegations met the statutory definition of robbery. *See* NRS 200.380(1). Accordingly, Meeks failed to demonstrate objectively reasonable counsel would have raised these arguments or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel done so. Therefore, we conclude the district court did not err in denying this claim.

Third, Meeks argued his counsel was ineffective for coercing him into pleading guilty by promising him he would receive probation. Meeks failed to demonstrate his counsel's performance was deficient or resulting prejudice. In the written plea agreement and at the plea canvass, Meeks acknowledged he had not been promised or guaranteed any particular sentence. In addition, Meeks acknowledged in the written plea agreement and at the plea canvass he entered his guilty plea voluntarily and did not enter his guilty plea under duress or coercion. Under these circumstances, Meeks failed to demonstrate his counsel acted in an objectively unreasonable manner or a reasonable probability he would have refused to plead guilty and insisted on proceeding to trial had counsel explained the guilty plea and possible sentences in a different


manner. Therefore, we conclude the district court did not err in denying this claim.²

Next, Meeks argues the district court erred by denying the petition without appointing postconviction counsel. 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. See *Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017).

Having concluded Meeks is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²The district court also denied the petition because it did not comply with the format identified by NRS 34.735. However, such an error was a curable defect and did not require denial of the petition. See *Miles v. State*, 120 Nev. 383, 387, 91 P.3d 588, 590 (2004). Nevertheless, as we conclude the district court properly denied the petition for the reasons explained previously, we affirm. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

³We have reviewed all documents Meeks has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Meeks has attempted to present claims or facts in those documents which were not previously presented in the proceedings below, we decline to consider them in the first instance.

cc: Hon. Joseph T. Bonaventure, Senior Judge
Almandre Shamari Meeks
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk