

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HAROLD E. MONTAGUE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71481

**FILED**

SEP 13 2017

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

*ORDER OF AFFIRMANCE*

Harold E. Montague appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on October 3, 2014. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Montague claims he should have been allowed to withdraw his guilty-but-mentally-ill plea because defense counsel failed to investigate his mental health issues and his ingestion of marijuana or spice on the day of the murder.

After sentencing, a district court may permit a petitioner to withdraw his 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 manifest injustice through ineffective assistance of counsel.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008). 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. State*, 466 U.S. 668, 687 (1984). We review claims of ineffective assistance of counsel de novo and a district court’s manifest

injustice determination for abuse of discretion. *Rubio*, 124 Nev. at 1039, 194 P.3d at 1229.


The district court conducted an evidentiary hearing and made the following findings: The record belies Montague's claims counsel failed to investigate his mental health issues. The State did not make any offers and intended to go trial and seek the death penalty. Counsel obtained Montague's mental health records and conducted an extensive investigation both in and out of the State of Nevada. It was only after counsel presented additional evidence of Montague's mental health that the State agreed to make an offer other than death. Counsel negotiated a plea of guilty but mentally ill based on the results of his investigation, and he presented the testimony of Dr. Tom Bittker to establish Montague's mental illness for the district court. Montague was competent at all times during the proceedings against him.

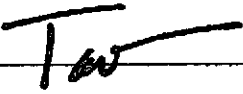
The district court further found Montague failed to demonstrate how additional investigation would have rendered a more favorable outcome at trial. Although counsel obtained the results of a blood test taken on the day of Montague's offense, and those results indicated Montague had THC in his system, counsel believed Montague's best defense was guilty but mentally ill. It was counsel's professional opinion that further investigation into Montague's drug use and the dealer could adversely affect the guilty-but-mentally-ill defense.


The record supports the district court's findings and we conclude Montague has not demonstrated defense counsel's investigation was inadequate, defense counsel provided ineffective-assistance, or manifest injustice. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538

(2004); *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989); *Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Stefany Miley, District Judge  
Christopher R. Oram  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk