

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALFRED C. GONZALEZ,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
SOUTHERN DESERT CORRECTIONAL
CENTER,
Respondent.

No. 71897

FILED

NOV 15 2017

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

ORDER OF AFFIRMANCE

Alfred G. Gonzalez appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on July 28, 2016.¹ Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Gonzalez claims the district court erred by denying his claims 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 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). Both

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

components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). To warrant an evidentiary hearing, a petitioner must support his claims with specific facts that, if true, would entitle him to relief. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Gonzalez claimed counsel was ineffective for failing to investigate the California convictions for possession of a controlled substance which were used to enhance his sentence pursuant to the habitual criminal statute. Gonzalez claimed that in 2014, the California Legislature passed a law reducing felony possession-of-a-controlled-substance convictions to misdemeanors. Gonzalez pleaded guilty in the instant case in 2015, and in 2016, after petitioning the California courts, his felony convictions were reduced to misdemeanors. Gonzalez claimed counsel should have known his convictions would be reduced to misdemeanors and, therefore, should have known the possession-of-a-controlled-substance prior felonies could not be used to enhance his sentence.

Gonzalez failed to demonstrate counsel was deficient or resulting prejudice because counsel knew Gonzalez had other prior felonies that would qualify him for the sentencing enhancement under the

habitual criminal statute.² Therefore, Gonzalez failed to demonstrate a reasonable probability he would not have pleaded guilty and would have insisted on going to trial had counsel challenged the prior possession convictions. Accordingly, the district court did not err by denying this claim without holding an evidentiary hearing.

Second, Gonzalez claimed counsel was ineffective for failing to file a direct appeal from his judgment of conviction based on the possession convictions not being felonies. Gonzalez claimed counsel should have filed an appeal because he had a meritorious issue to raise on appeal.


Gonzalez failed to demonstrate counsel was deficient. Gonzalez was informed in his guilty plea agreement and during his plea colloquy with the district court judge about the right to appeal. Gonzalez did not allege he requested counsel file an appeal or that he expressed dissatisfaction with his conviction. *See Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011). Accordingly, the district court did not err by denying this claim without holding an evidentiary hearing.

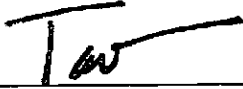
Finally, Gonzalez claimed his plea was not knowingly and voluntarily entered because counsel was ineffective for failing to investigate the possession convictions. As stated above, Gonzalez failed to demonstrate counsel was ineffective regarding the prior possession convictions. Therefore, the district court did not err by denying this claim

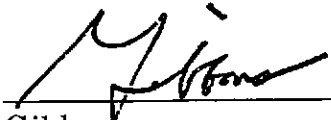
²We note, until Gonzalez' petition to reduce the felonies to misdemeanors was granted, the convictions were felonies. *See* Cal. Penal Code § 1170.18. The reduction in severity of the convictions was not automatic. *Id.*

without holding an evidentiary hearing. *See Molina v. State*, 120 Nev. 185, 190-191, 87 P.3d 533, 537-38 (2004). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Robert W. Lane, District Judge
Alfred C. Gonzalez
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk

³We also conclude the district court did not abuse its discretion by denying Gonzalez' motion to appoint counsel. *See* NRS 34.750(1); *Renteria-Novoa*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017).