

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEXANDER CASANELLAS LOPEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72493

FILED

JAN 09 2018

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

ORDER OF AFFIRMANCE

Alexander Casanellas Lopez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Lopez argues the district court erred in denying his claim of ineffective assistance of counsel raised in his May 26, 2015, 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*). 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). We give deference to the district 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).

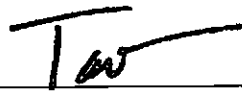
Lopez argues his counsel was ineffective for failing to have a discussion with him regarding a plea offer. Lopez failed to demonstrate his counsel's performance was deficient or resulting prejudice. The record demonstrates shortly before the beginning of trial, Lopez' counsel and the State explained to the trial court the State had previously offered to dismiss the conspiracy to commit robbery charge and to forgo the habitual criminal enhancement in exchange for Lopez' guilty plea to robbery with the use of a deadly weapon, but Lopez had rejected that offer. Lopez' counsel explained to the trial court that Lopez rejected the plea offer because Lopez also had a federal criminal case and a guilty plea to the State charge would have enhanced the penalties he faced in the federal court matter. Counsel asserted Lopez' federal case had since been resolved and counsel had approached the State to discuss a potential new plea deal, but the State had declined to negotiate the case at that point because it was ready for trial.

The district court concluded this discussion demonstrated Lopez' claim was belied by the record. *See Mann v. State*, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002) ("A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made."). Substantial evidence supports the district court's conclusion in this regard. Accordingly, Lopez failed to demonstrate his counsel acted in an objectively unreasonable manner or a reasonable probability of a different outcome had counsel performed different actions with respect to the State's plea offer. Therefore, we conclude the district court did not err in denying this claim.

Next, Lopez argues the district court erred in denying the petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific allegations not belied by the record, and if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). The district court concluded Lopez' claims failed to meet that standard and the record before this court reveals the district court's conclusion in this regard was proper. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Valerie Adair, District Judge
Law Office of Julian Gregory, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk