

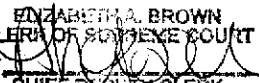
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEVIN FINN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72201

FILED

JAN 09 2018

ENZO BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Devin Finn 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; Susan Johnson, Judge.

Finn argues the district court erred in denying the claims of ineffective assistance of counsel raised in his September 7, 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, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984).

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

First, Finn claimed his counsel was ineffective for coercing him into pleading guilty by promising he would receive a sentence totaling 6 to 16 years in prison. Finn failed to demonstrate his counsel's performance was deficient or resulting prejudice. In the written plea agreement, Finn acknowledged he had not been promised or guaranteed any particular sentence. In addition, Finn acknowledged in the written plea agreement he entered his guilty plea voluntarily and did not enter his guilty plea under duress or coercion. Under these circumstances, Finn 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.

Second, Finn claimed his counsel was ineffective for failing to investigate the firearm alleged to have been used during the crimes or retain a firearms expert. Finn asserted the firearm was a toy BB gun and did not meet the statutory definition of a deadly weapon. Finn failed to demonstrate his counsel's performance was deficient or resulting prejudice. Finn's BB gun met the statutory definition of a deadly weapon. *See* NRS 193.165(6); NRS 202.290. Accordingly, Finn failed to demonstrate objectively reasonable counsel would have investigated this issue or asserted the BB gun was not a deadly weapon. Finn also failed to demonstrate a reasonable probability he would have refused to plead guilty and insisted on proceeding to trial had counsel sought to challenge the deadly weapon enhancement. Therefore, we conclude the district court did not err in denying this claim.

Third, Finn claimed his counsel was ineffective for failing to move to suppress his confession. Finn asserted his confession was coerced by a police officer. Finn failed to demonstrate resulting prejudice. Even excluding Finn's confession, the record reveals overwhelming evidence of his guilt. The crimes were recorded on surveillance video and a search of Finn's bedroom revealed the BB gun, clothes, shoes, and mask depicted on the surveillance video. The search also revealed a bag containing a large amount of money and Finn was recorded on a jail phone call questioning his girlfriend regarding her attempt to hide the money. Given the overwhelming evidence of Finn's guilt, Finn failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel moved to suppress the confession. Therefore, we conclude the district court did not err in denying this claim.

Fourth, Finn claimed his counsel was ineffective for failing to communicate defense strategies. Finn failed to demonstrate either deficiency or prejudice for this claim because he did not support this claim with specific facts. Bare claims, such as this one, are insufficient to warrant relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, we conclude the district court did not err in denying this claim.

Fifth, Finn claimed his counsel was ineffective for failing to pursue a direct appeal. Finn failed to demonstrate counsel's performance was deficient. Finn specifically waived his right to appeal the judgment of conviction in the written plea agreement. Therefore, we conclude the district court did not err in denying this claim.


Next, Finn 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. *Id.* The district court concluded Finn failed to meet that standard and the record before this court reveals the district court's conclusions in this regard were proper.

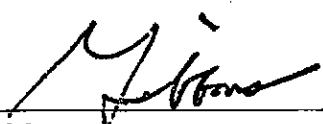
Finally, Finn argues the district court erred in denying his request for the appointment of postconviction counsel. The appointment of postconviction counsel was discretionary in this matter. *See* NRS 34.750(1). After a review of the record, we conclude the district court did not abuse its discretion 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 Finn is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
Devin Finn
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk