

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN JALONI MOLLISON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72652

FILED

MAY 15 2018

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

ORDER OF AFFIRMANCE

John Jaloni Mollison appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 29, 2016, and an amended petition filed on August 23, 2016.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Mollison contends the district court erred by denying his ineffective-assistance-of-counsel claims. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability that, 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 prove prejudice to invalidate the decision to enter a guilty plea, a petitioner must demonstrate there was a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and

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

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 deficiency and prejudice 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). A petitioner is not entitled to relief on bare claims, i.e., claims unsupported by specific factual allegations that, if true and not repelled by the record, would entitle him to relief. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Mollison claimed counsel was ineffective for not claiming he was actually innocent. Mollison failed to demonstrate counsel was deficient or resulting prejudice. The Nevada Supreme Court “has yet to address whether and, if so, when a free-standing actual innocence claim exists.” *Berry v. State*, 131 Nev. ___, ___ n.3, 363 P.3d 1148, 1154 n.3 (2015). Mollison has not demonstrated counsel was objectively unreasonable in not raising a claim that does not necessarily exist. Further, Mollison pleaded guilty pursuant to *North Carolina v. Alford* and thus, by nature of the plea, maintained his innocence. 400 U.S. 25, 38 (1970). As a result, any question of Mollison’s actual innocence was “academic” and would not afford relief. See *Hargrove*, 100 Nev. at 503, 686 P.2d at 226. We therefore conclude the district court did not err by denying this claim.

Second, Mollison claimed counsel coerced, manipulated, and intimidated him into pleading guilty. Mollison failed to demonstrate counsel was deficient or resulting prejudice. In support, Mollison claimed only that he had less than ten minutes to make his decision and read and sign his plea agreement. Mollison’s allegations did not suggest coercion, manipulation, or intimidation. Further, we note Mollison changed his plea

on the first day of trial, having previously entered and subsequently withdrawn a guilty plea, such that he was not unfamiliar with the process and consequences of pleading guilty. We therefore conclude the district court did not err by denying this claim.

Third, Mollison claimed counsel failed to adequately investigate his case. Mollison failed to demonstrate counsel was deficient or resulting prejudice. Mollison claimed counsel should have investigated a list of witnesses, an anonymous handwritten letter received by the victims' mother, and a video on a phone in the possession of the victims' mother. Mollison failed to demonstrate counsel was objectively unreasonable in not interviewing unidentified witnesses or seizing a phone and/or letter from the victims' mother. Further, he failed to specify to what the witnesses would have testified. Finally, because Mollison knew of all of this alleged evidence at the time of his plea, he failed to demonstrate that, but for counsel's failures, he would not have pleaded guilty and would have insisted on going to trial. We therefore conclude the district court did not err by denying this claim.

Fourth, Mollison claimed counsel was ineffective for failing to adequately communicate with him. Mollison failed to demonstrate counsel was deficient or resulting prejudice. Mollison claimed counsel engaged in deceitful communications with his family and did not review with him exculpatory evidence the State turned over or discrepancies in representations made by the victims' mother. Mollison did not identify any deceitful communication or exculpatory evidence and thus raised a bare claim. And Mollison did not claim he was unaware of the victims' mother's discrepant statements at the time he entered his guilty plea, and he thus failed to demonstrate a reasonable probability of a different outcome had

counsel reviewed them with him. We therefore conclude the district court did not err by denying this claim.

Fifth, Mollison claimed counsel suffered from a conflict of interest such that the district court, which was aware of the conflict, should not have accepted Mollison's guilty plea. Mollison failed to demonstrate counsel was deficient or resulting prejudice. Mollison claimed the conflict arose from counsel's failure to investigate his case and communicate with him. Such alleged failures would not demonstrate a conflict of interest. See *Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) ("[A] conflict exists when an attorney is placed in a situation conducive to divided loyalties."). Further, as discussed above, Mollison has not demonstrated a reasonable probability he would not have pleaded guilty and would have insisted on going to trial but for counsel's alleged failures. We therefore conclude the district court did not err by denying this claim.


Sixth, Mollison claimed counsel did not present a case in mitigation at his sentencing hearing. Mollison's bare claim failed to demonstrate counsel was deficient or resulting prejudice. Mollison did not indicate what mitigation evidence counsel could have presented. Further, the district court sentenced Mollison in accord with the stipulation in his guilty plea agreement to an aggregate sentence of 6 to 45 years. Mollison has not demonstrated a reasonable probability of the district court deviating downward in his sentence, especially since he was originally charged with 13 counts of sexual assault of a minor under 14 years old and 11 counts of lewdness with a minor under 11 years old. We therefore conclude the district court did not err by denying this claim.

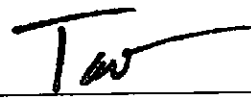
To the extent Mollison claimed he was entitled to relief due to the cumulative effect of counsel's errors, his claim lacked merit. Mollison

had not demonstrated counsel committed any error, and there was thus nothing to cumulate. We therefore conclude the district court did not err by denying this claim.

Finally, we conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017). Mollison was not entitled to the appointment of counsel as a matter of right. See *Brown v. McDaniel*, 130 Nev. 565, 569, 331 P.3d 867, 870 (2014). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
John Jaloni Mollison
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk