

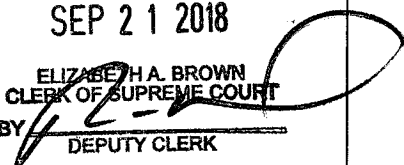
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUAN RIVERA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74019

FILED

SEP 21 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Juan Rivera appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 2, 2016, and a supplemental petition filed on September 28, 2016. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Rivera claims the district court erred by denying his ineffective-assistance-of-counsel claims. 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). 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).

First, Rivera claimed counsel was ineffective for failing to consult with a DNA expert prior to Rivera pleading guilty. Rivera failed to demonstrate counsel was deficient or resulting prejudice because he failed to demonstrate what the results of consulting with a DNA expert would be. The burden is on the petitioner to demonstrate what a more thorough investigation would have revealed. *See Molina v. State*, 120 Nev. 185, 192, 87 P.2d 533, 538 (2004); *see also Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (claims raised in a postconviction petition for a writ of habeas corpus must be supported by specific facts that, if true, would entitle the petitioner to relief). Therefore, the district court did not err by denying this claim.

Second, Rivera claimed counsel was ineffective for failing to file a motion to suppress his statements made to police. Rivera claimed that while he was given his *Miranda*¹ warnings, he was only 19 at the time of the police interview, he was subject to lengthy questioning without an attorney in a hostile and coercive environment, he was extremely frightened and fearful, he was sobbing at one point, and he always adamantly denied he committed the sexual assault.

Rivera failed to demonstrate counsel was deficient or resulting prejudice. Rivera failed to show such a motion would have been successful. *See Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (counsel is not deficient for failing to file futile motions). At the evidentiary hearing, testimony was presented that Rivera was given his *Miranda* warnings twice, he validly waived them after having an interpreter present, and he requested to speak with the police. Further, Rivera failed to demonstrate,

¹*Miranda v. Arizona*, 384 U.S. 436 (1966).

under the totality of the circumstances, the interview was coercive. See *Mendoza v. State*, 122 Nev. 267, 276, 130 P.3d 176, 181-82 (2006) (*Miranda* waiver is voluntary “if, under the totality of the circumstances, the confession was the product of a free and deliberate choice rather than coercion or improper inducement” (quoting *United States v. Doe*, 155 F.3d 1070, 1074 (9th Cir. 1998))).


Further, Rivera failed to demonstrate, even if a motion to suppress was granted, there was a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. In addition to confessing to the police that he killed the victim, Rivera voluntarily participated in an interview with a television station where he confessed to killing the victim and having a strong sexual attraction to her. Therefore, we conclude the district court did not err by denying this claim.


Third, Rivera claimed counsel was ineffective for failing to seek a neuro-psychological examination prior to Rivera pleading guilty. Rivera claimed that such an examination would have revealed he was “extraordinarily mentally and emotionally troubled at the time he entered his plea” and, therefore, his plea was not knowingly and voluntarily entered. Rivera failed to demonstrate counsel was deficient or resulting prejudice. Counsel testified at the evidentiary hearing he had Rivera complete a psychological examination to see if there were mental health issues that would afford a defense at trial or to provide some support for a finding of guilty but mentally ill. Nothing in the psychologist’s report called into question Rivera’s competency or ability to enter a plea. Further, counsel testified he never had any reason to doubt Rivera was competent at the time he entered his plea.

Moreover, Rivera failed to demonstrate what a neuropsychological examination would have revealed about Rivera's competence to enter a guilty plea. Rivera did not present any testimony, either through his own testimony or through an expert, to support this claim. The burden is on the petitioner to demonstrate what a more thorough investigation would have revealed. *See Molina*, 120 Nev. at 192, 87 P.2d at 538. Therefore, the district court did not err by denying this claim.

Finally, Rivera claims the cumulative errors of trial counsel entitle him to relief. However, because Rivera failed to demonstrate any error, he failed to demonstrate he was entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk