

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY MARQUIS MYRICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73557

FILED

AUG 30 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Gregory Marquis Myrick appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 17, 2017, and a motion for modification of sentence filed on March 16, 2017.¹ Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

In his petition, Myrick claimed he received ineffective assistance from his defense 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 prejudice resulted in that there was a reasonable probability that, but for counsel's errors, the 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

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). To be entitled to relief, the petitioner must allege specific facts that, if true and not belied by the record, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Myrick claimed counsel coerced him into entering a guilty plea by telling him his codefendant would be facing a life sentence if he did not accept the plea offer and by failing to tell him his codefendant had taken sole responsibility for the shooting. Myrick failed to demonstrate counsel was deficient or that he was prejudiced. Myrick's alleged facts did not demonstrate coercion, as they did not indicate that his plea was "induced by promises or threats which deprive[d] the plea of the nature of a voluntary act." *Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015) (quotation marks omitted).

Moreover, counsel cannot be deficient for giving candid advice. The State's plea offer was conditioned on both Myrick and his codefendant, who was also his fiancée, accepting the offer.² If Myrick rejected the offer, his codefendant faced the functional equivalent of a life sentence: an aggregated maximum sentence of up to 103 years in prison. *See* NRS 193.165(1); NRS 193.330(1)(a)(1); NRS 199.480(1)(b); NRS 200.030(4), (5); NRS 200.400(3); NRS 200.481(2); NRS 202.285. Further, we note Myrick spontaneously admitted to police that he instructed his codefendant to shoot

²Both the codefendant and Myrick were indicted for conspiracy to commit murder, attempted murder with the use of a deadly weapon, battery with intent to commit murder with the use of a deadly weapon, battery with use of a deadly weapon resulting in substantial bodily harm, and three counts of discharging a firearm at or into a vehicle. Myrick was also indicted for being an ex-felon in possession of a firearm.

the victim. He thus failed to demonstrate a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on a trial. We therefore conclude the district court did not err by denying this claim.

Second, Myrick claimed counsel should have challenged the sufficiency of the evidence prior to Myrick's guilty plea. Specifically, Myrick points to a statement by his codefendant accepting full and sole responsibility for the shooting. Myrick failed to demonstrate counsel was deficient or that he was prejudiced. Any such challenge would have been futile because sufficient evidence supported the allegations: Myrick admitted to police that he had instructed his codefendant to shoot the victim. Counsel cannot be ineffective for failing to raise futile objections. *Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). We therefore conclude the district court did not err by denying this claim.


Finally, Myrick claimed counsel failed to advise him of his right to appeal his conviction. Myrick failed to demonstrate counsel was deficient or that he was prejudiced. Myrick failed to allege any specific facts that demonstrated counsel had a duty to advise him regarding a direct appeal. *See Toston v. State*, 127 Nev. 971, 977, 267 P.3d 795, 799-800 (2011). Further, Myrick unconditionally waived his right to a direct appeal. We therefore conclude the district court did not err by denying this claim.


In his motion for modification of his sentence, Myrick asked the district court to modify his sentences so they ran concurrent to one another in light of his relative culpability and that his guilty plea was coerced. Myrick's claims fell outside the narrow scope of claims permissible in a motion to modify a sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918

P.2d 321, 324 (1996). Therefore, without the considering the merits of any of the claims raised in the motion, we conclude the district court did not err by denying the motion.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Jennifer P. Togliatti, District Judge
Gregory Marquis Myrick
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We 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).