

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID BELL, A/K/A RAHIM HANIF,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73564

FILED

AUG 30 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

David Bell appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 8, 2017.¹ Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Bell claimed he received ineffective assistance from his trial-level 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 the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). The district court may deny a petition without first conducting an evidentiary hearing

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).

if the petitioner fails to allege specific facts that, if true and not belied by the record, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Bell claimed counsel was ineffective for telling him that victim Tobias Mattstedt had given an incriminating statement to police. Bell noted two other victims had given such statements but nothing indicated Mattstedt had done so. Bell's claim was belied by the record. Bell's case was a consolidation of three cases. In district court cases 15-CR-00423 and 15-CR-00457, the State attached Mattstedt's affidavit as exhibits to its notices of intent to use affidavit of witness, filed two months before Bell's guilty plea. We therefore conclude the district court did not err by denying this claim.


Second, Bell claimed counsel was ineffective for failing to challenge the State's failure to keep its part of a verbal agreement to keep the plea offer open until trial if Bell waived his preliminary hearing. Bell failed to demonstrate prejudice. He claimed counsel's deficiency forced him "to accept a plea that I never would have accepted and insisted on a trial . . . [h]ad the agreement been followed or if I received my preliminary hearing." In essence, Bell claimed he would have insisted on trial regardless of whether the State upheld its part of the alleged verbal agreement. Yet Bell did not insist on trial; he pleaded guilty. Bell failed to demonstrate that, but for counsel's alleged errors, 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.

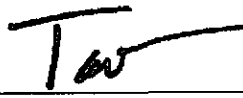
Finally, Bell claimed counsel was ineffective for failing to investigate his alibi for one of the charges and an alternative suspect and video related to another of the charges. Bell did not indicate that, but for

counsel's alleged failure, he would not have pleaded guilty but would have insisted on going to trial on the 16 felony charges while facing the prospect of being adjudicated a habitual criminal. As Bell admitted in his reply below, he "had a slim to no chance of winning a trial." We therefore conclude the district court did not err by denying these claims.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²The district court denied Bell's petition almost entirely on the basis that his claims were belied by the record. In support, the district court purported to quote from his guilty plea canvass. There is no transcript of Bell's guilty plea in the record before this court, and none is reflected on the district court's docket sheet. Accordingly, we conclude the district court's findings are not supported by substantial evidence in the record. We nevertheless affirm the district court's denial of Bell's petition for the reasons stated above. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

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).

cc: Hon. Thomas L. Stockard, District Judge
David Bell
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk