

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL DALE RULE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73382

FILED

JUL 17 2018

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

ORDER OF AFFIRMANCE

Michael Dale Rule appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus and a motion for modification of sentence.¹ Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

In his January 3, 2017, petition, Rule argued that his counsel was ineffective. 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).

Rule claimed his counsel was ineffective because counsel only discussed one plea offer with him. Rule did not allege there were additional plea offers made that counsel failed to discuss with him. Rule appeared to assert that counsel should have been able to obtain a more favorable plea deal, but he provided no argument as to how counsel could have reasonably obtained concessions from the State during plea negotiations. Rule's claim was thus bare and unsupported, which is insufficient to demonstrate he was entitled to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Accordingly, Rule failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. Moreover, Rule did not demonstrate "a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time," *Missouri v. Frye*, 566 U.S. 134, 147 (2012), and therefore failed to meet his burden to demonstrate he was prejudiced by counsel's actions regarding the plea negotiations. Therefore, we conclude the district court did not err by denying this claim.

Next, Rule requested to withdraw his guilty plea because he has since realized he made a mistake. Rule failed to establish that withdrawing his plea was necessary to correct a manifest injustice. *See NRS 176.165; Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014). Therefore, we conclude the district court did not err by denying Rule's petition.

In his January 3, 2017, motion for modification of sentence, Rule claimed he suffered from ineffective assistance of counsel, he missed a court hearing because he had to deal with a family emergency in West Virginia, and he suffered from problems with drug abuse. Rule's claims fell outside the narrow scope of claims permissible in a motion for modification of sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324

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

ORDER the judgment of the district court AFFIRMED.




Silver

C.J.



Tao

J.



Gibbons

J.

cc: Hon. Jennifer P. Togliatti, District Judge
Michael Dale Rule
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk