

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO COMEILL BONDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75201-COA

FILED

DEC 04 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Antonio Comeill Bonds appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Bonds argues the district court erred by denying the claims of ineffective assistance of counsel raised in his March 9, 2017, petition and later filed supplement. To prove ineffective assistance of counsel, a petitioner must demonstrate 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, 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 demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must demonstrate 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*, 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).

First, Bonds argued his counsel was ineffective for negotiating a plea agreement that resulted in Bonds entering a guilty plea to a charge that did not conform to the facts of the crime. Bonds asserted that he was alleged to have brandished a box cutter at a store employee after being informed the store did not sell a soccer jersey. Bonds contended these facts did not meet the elements of attempted larceny from a person and, therefore, his counsel should not have negotiated for him to enter a guilty plea to that offense. Bonds failed to demonstrate his counsel's performance was deficient or resulting prejudice.

The record reveals Bonds was initially charged with assault with a deadly weapon, but through the plea agreement the charge was reduced to attempted larceny from a person, an offense carrying a shorter sentence. *See* NRS 193.330(1)(a)(4); NRS 200.471(2)(b); NRS 205.270(1)(a). As Bonds faced a shorter sentence due to the guilty plea agreement, he failed to demonstrate counsel's negotiation during the trial-level proceedings amounted to an objectively unreasonable performance. In addition, in the written plea agreement and at the plea canvass, Bonds asserted he understood the elements of an offense of attempted larceny from a person and the potential penalties he faced. Bonds also asserted in the written plea agreement he had discussed the facts of the case with counsel and concluded entry of a guilty plea was in his best interest. Given the record in this matter and the initial charge Bonds faced, Bonds did not

demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel attempted to negotiate a different plea agreement. Therefore, we conclude the district court did not err by denying this claim.


Second, Bonds argued his counsel was ineffective for failing to file a motion to withdraw guilty plea. Bonds appeared to assert counsel should have sought withdrawal of Bonds' guilty plea because the facts of the crime did not meet the elements of attempted larceny from a person. Bonds failed to demonstrate his counsel's performance was deficient or resulting prejudice. As stated previously, Bonds faced a shorter sentence due to entry of a guilty plea and he asserted in the written plea agreement he understood the elements of attempted larceny from a person, discussed the case with his counsel, and concluded entry of a guilty plea was in his best interest. Given the record in this matter, Bonds failed to demonstrate it was objectively unreasonable for counsel not to file a motion to withdraw guilty plea or a reasonable probability of a different outcome had counsel filed such a motion because Bonds did not demonstrate he had a fair and just reason to withdraw his guilty plea. *See Stevenson v. State*, 131 Nev. 598, 603-604, 354 P.3d 1277, 1281 (2015). Therefore, we conclude the district court did not err by denying this claim.

Finally, Bonds appears to assert the district court erred by denying the petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific allegations not belied by the record, and if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). The district court concluded Bonds' claims failed to meet that

standard and the record before this court reveals the district court's conclusions in this regard were proper. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kenneth C. Cory, District Judge
Matthew D. Carling
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk