IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHELLE ROSE TRUDEAU,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74984-COA

ORDER OF AFFIRMANCE

Michelle Rose Trudeau appeals from a district court order dismissing a postconviction petition for a writ of habeas corpus filed on June 9, 2017. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Trudeau claims the district court erred by finding that she entered her guilty plea knowingly, voluntarily, and intelligently because the totality of the circumstances demonstrate she had a reasonable expectation of receiving probation, which was left unfulfilled and thereby invalidated the guilty plea agreement. She specifically argues the district court's extrajudicial involvement in the parties' plea negotiations gave rise to an expectation of probation.

After sentencing, a district court may permit a petitioner to withdraw a guilty plea where necessary "[t]o correct manifest injustice." NRS 176.165. "A manifest injustice occurs where a defendant makes a plea involuntarily or without knowledge of the consequences of the plea—or where the plea is entered without knowledge of the charge or that the sentence actually imposed could be imposed." *State v. James*, 500 N.W.2d 345, 348 (Wis. Ct. App. 1993) (internal quotation marks omitted). "[We] will not overturn the district court's determination on manifest injustice absent

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a clear showing of an abuse of discretion." *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1229 (2008) (internal quotation marks omitted).

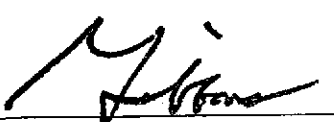
The district court heard argument on the pleadings, reviewed the relevant transcripts, and made the following findings. Trudeau's claim that she did not know the full extent of her plea's consequences is belied by the plea canvass transcript and the written plea agreement. Trudeau received what she bargained for when she renegotiated a plea agreement to exclude the mandatory term of imprisonment. And Trudeau knew the district court was still free to sentence her to a term of imprisonment. The district court further found Trudeau's subjective belief and hope were insufficient to invalidate the guilty plea and she failed to demonstrate a manifest injustice had occurred.

We conclude the district court's findings are supported by the record, the district court properly exercised its discretion in finding there was no manifest injustice, and the district court did not err by dismissing Trudeau's postconviction habeas petition. *See Rouse v. State*, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975) (a petitioner's mere, subjective belief regarding a potential sentence is insufficient to invalidate a guilty plea). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver

_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Robert W. Lane, District Judge
Gary A. Modafferi
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk

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IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES ALEXANDER WHALEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74865-COA

ORDER OF AFFIRMANCE

Charles Alexander Whaley appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 4, 2016, and a supplemental petition filed on August 3, 2017. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Whaley argues the district court erred by denying his claims that counsel was ineffective and his plea was invalid. 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).

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After conviction, a district court may permit a petitioner to withdraw a guilty plea where necessary "to correct manifest injustice." NRS 176.165. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). In determining the validity of a guilty plea, this court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). To warrant an evidentiary hearing, a petitioner must support his claims with specific facts that, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Whaley argued counsel was ineffective for failing to investigate. He claimed had counsel investigated he would have discovered Whaley acted in self-defense and this would have shown Whaley was deprived of a fair trial. Whaley failed to demonstrate he was prejudiced. Whaley cited to an incorrect standard for determining prejudice when a petitioner has pleaded guilty. The standard was not whether Whaley was deprived of a fair trial, but whether Whaley demonstrated a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Whaley failed to allege or demonstrate he would not have pleaded guilty and would have insisted on going to trial.[1] Therefore, we

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[1]To the extent Whaley argues on appeal counsel's failure to investigate caused his plea to be unknowing, unintelligent, or involuntary, this claim was not raised below and we decline to consider it for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1996).

conclude the district court did not err by denying this claim without holding an evidentiary hearing.

Second, Whaley claimed counsel was ineffective because counsel told him he had no choice but to plead guilty and counsel bullied and coerced him into pleading guilty. Further, he claimed counsel did not fully explain the facts and law or discuss possible defenses with him.

Whaley failed to demonstrate counsel was deficient or resulting prejudice because this claim is belied by the record. Whaley signed the guilty plea agreement that described the charges, the elements of the charges, and the potential penalties he was facing. Further, the guilty plea agreement included a clause stating Whaley was not coerced or promised anything not contained in the agreement. The guilty plea agreement also contained a clause stating counsel had discussed all potential defenses with Whaley. At the change of plea hearing, the district court asked Whaley whether he discussed the plea agreement with counsel and whether he understood the agreement. Whaley stated he did. Whaley also told the district court no one was forcing him to plead guilty and he was pleading guilty of his own free will. Therefore, we conclude the district court did not err by denying this claim without holding an evidentiary hearing.

Third, Whaley claimed counsel was ineffective for failing to adequately represent him during his presentence motion to withdraw the guilty plea. He claimed counsel was ineffective for failing to consider Whaley's claims regarding errors in the charging documents, adequately explain the factual basis for withdrawing the plea, and argue Whaley did not receive comprehensive legal counseling prior to his plea to make an intelligent choice regarding his plea.

Whaley failed to demonstrate counsel was deficient or resulting prejudice because he failed to demonstrate a fair and just reason for withdrawing his guilty plea that counsel should have presented. *See Stevenson v. State*, 131 Nev. 598, 603-04, 354 P.3d 1277, 1281 (2015). Therefore, we conclude the district court did not err by denying this claim without holding an evidentiary hearing.

Fourth, Whaley claimed counsel was ineffective for failing to prepare and present mitigating evidence at sentencing. Whaley failed to demonstrate counsel was deficient or resulting prejudice because he failed to allege what mitigation evidence counsel could have presented at sentencing. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Therefore, we conclude the district court did not err by denying this claim without holding an evidentiary hearing.

Finally, Whaley claimed the cumulative errors of counsel entitled him to relief. Because Whaley failed to demonstrate more than one error, he necessarily failed to demonstrate cumulative error. *See United States v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000); *see also Pascua v. State*, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006). Having concluded Whaley is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.

Silver, C.J.

Tao, J.

Gibbons, J.

cc: Hon. Kathleen E. Delaney, District Judge
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk