

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CAM SCOTT EASH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75399-COA

FILED

JAN 17 2019

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

ORDER OF AFFIRMANCE

Cam Scott Eash appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on October 4, 2016.¹ Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

First, Eash claims the district court erred by denying his claim that defense counsel was ineffective. To establish ineffective assistance of counsel, a petitioner who has been convicted pursuant to a guilty plea must demonstrate counsel's performance was deficient because it fell below an objective standard of reasonableness, and resulting prejudice in that there is a reasonable probability, but for counsel's errors, the petitioner would not have pleaded guilty and would have insisted on going to trial. *Kirksey v. State*, 112 Nev. 980, 997-88, 923 P.2d 1102, 1107 (1996).

The petitioner must demonstrate both components of the ineffective-assistance inquiry—deficiency and prejudice. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the district court's factual findings if they are supported by substantial evidence and

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

are not clearly wrong, but we 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).

Eash claimed defense counsel was ineffective for telling him that his sentence would be capped at 5 to 13 years for the robbery-with-the-use-of-a-deadly-weapon count. The district court held an evidentiary hearing and made the following findings. Counsel testified credibly she did not advise Eash that his sentence would be capped at 5 to 13 years for the robbery with the use of a deadly weapon. Judge Hardy told Eash he was not bound by the parties' sentencing agreement and he could sentence Eash to maximum sentences. And Judge Hardy told Eash what the possible sentences were. We conclude the district court's findings are supported by substantial evidence and are not clearly wrong, Eash failed to demonstrate counsel was deficient and he was prejudiced by counsel's performance, and the district court did not err by rejecting this claim.

Second, Eash claims the district court erred by denying his claim that he is actually innocent of the robbery-with-the-use-of-a-deadly-weapon count. However, freestanding claims of actual innocence fall outside the scope of permissible claims that may be raised in a postconviction habeas petition challenging a judgment of conviction based on a guilty plea. See NRS 34.810(1)(a) (limiting claims in postconviction habeas petitions to allegations "the [guilty] plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel"). In addition, neither the United States Supreme Court nor the Nevada Supreme Court have "resolved whether a prisoner may be entitled to habeas relief based on a freestanding claim of actual innocence." *McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013); see *Berry v.*

State, 131 Nev. 957, 967 n.3, 363 P.3d 1148, 1154 n.3 (2013). And even if such relief were available, Eash has not demonstrated he is actually innocent of the multiple felony charges the State relinquished during the plea bargaining process.² See *Bousley v. United States*, 523 U.S. 614, 624 (1998). Accordingly, we conclude the district court did not err by rejecting this claim.³

Third, Eash claims the district court erred by denying his petition without appointing postconviction counsel. The Nevada Supreme Court has “stress[ed] the decision whether to appoint counsel under NRS 34.750(1) is not necessarily dependent upon whether a pro se petitioner has raised claims that clearly have merit or would warrant an evidentiary hearing[;]” instead, this decision turns on whether the appointment of counsel is essential to ensure the petitioner has “a meaningful opportunity to present his or her claims to the district court.” *Renteria-Novoa v. State*, 133 Nev. 75, 77-78; 391 P.3d 760, 762 (2017). Here, the record demonstrates Eash had a meaningful opportunity to present his claims to the district court. Accordingly, we conclude the district court did not abuse its

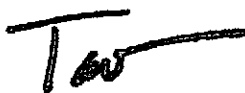
²Eash was initially charged with two counts of eluding or failing to stop on the signal of a peace officer, endangering other persons or property; robbery with the use of a deadly weapon; possession of a firearm by a prohibited person; and possession of a stolen motor vehicle. See NRS 193.165(1); NRS 200.380(2); NRS 202.360(1); NRS 205.273(4); NRS 484B.550(3).

³The district court found that even if this claim were viewed as a claim of ineffective assistance of counsel, Eash would not be entitled to relief because he failed to demonstrate ineffective assistance of counsel. The record supports the district court’s finding, and we conclude Eash failed to demonstrate counsel’s performance was deficient.

discretion by denying Eash's petition without appointing postconviction counsel.

Having concluded Eash is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Elliott A. Sattler, District Judge
Cam Scott Eash
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk