

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEFAN ANDREW RODRIGUES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74893-COA

FILED

FEB 13 2019

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

ORDER OF AFFIRMANCE

Stefan Andrew Rodrigues appeals from a district court order denying a timely postconviction petition and supplemental petitions for a writ of habeas corpus. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Rodrigues claims the district court erred by finding his guilty plea was voluntarily, knowingly, and intelligently entered because he was deprived of effective assistance of counsel. He argues he received little or no communication from defense counsel, he was led to believe that his sentences would be concurrent and he would be released in six months' time if he accepted the plea offer, and he would not have accepted the plea offer if he had been fully advised of its potential consequences. And he asserts he "felt foggy" on the day of his plea canvass because he was taking medication for his mental health issues.

After sentencing, a district court may permit a petitioner to withdraw his guilty plea where necessary "[t]o correct manifest injustice." NRS 176.165. "A guilty plea entered on advice of counsel may be rendered

invalid by showing manifest injustice through ineffective assistance of counsel.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008). To prevail on a claim of ineffective assistance of counsel, a petitioner must show (1) counsel’s performance was deficient because it fell below an objective standard of reasonableness and (2) the deficiency prejudiced the defense. *Strickland v. State*, 466 U.S. 668, 687 (1984). We review claims of ineffective assistance of counsel de novo and a district court’s manifest injustice determination for abuse of discretion. *Rubio*, 124 Nev. at 1039, 194 P.341 at 1229.

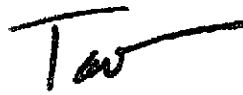
The district court conducted an evidentiary hearing and made the following findings. On the day set for the motion-to-set-trial hearing, defense counsel discussed a plea offer with Rodrigues and advised him to take it. That night, defense counsel visited Rodrigues at the jail and further discussed the offer. Six days later, the district court thoroughly canvassed Rodrigues on his decision to accept the offer and plead guilty. Rodrigues was fully informed of the full range of available sentences, he acknowledged reading the guilty plea memorandum, which set forth the range of sentences, and he provided appropriate responses to the judge’s questions. And Rodrigues failed to prove his ineffective-assistance-of-counsel claim by a preponderance of the evidence.


The record supports the district court’s findings and we conclude Rodrigues has not demonstrated defense counsel was ineffective nor has he shown manifest injustice. *See Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner must prove the facts underlying his claims of ineffective-assistance by a preponderance of the evidence); *Rouse v. State*, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975) (petitioner’s mere,

subjective belief regarding a potential sentence is insufficient to invalidate a guilty plea). Therefore, we

ORDER the judgment of the district court AFFIRMED.


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Barry L. Breslow, District Judge
Law Offices of Lyn E. Beggs, PLLC
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk