

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS GUIZAR BARAJAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75137-COA

FILED

APR 16 2019

ELIZABETH L. BROWN
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Carlos Guizar Barajas appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 15, 2015, and supplemental petition filed on August 26, 2017. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Barajas contends the district court erred by denying his claims that counsel was ineffective without first conducting an evidentiary hearing. 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 prejudice resulted in that there was a reasonable probability of a different outcome absent for counsel's errors. *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 that, 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);



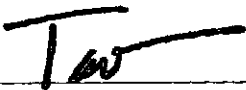
Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that, if true and not repelled by the record, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03; 686 P.2d 222, 225 (1984).

Barajas first claimed counsel was ineffective in the guilty plea process. Not long before Barajas pleaded guilty, Christy Craig joined Barajas' defense team. And it was Craig who discussed the State's plea offer with Barajas, because Barajas' primary counsel, Joseph Abood, was temporarily unavailable. Abood was present when Barajas entered his guilty plea. Barajas claimed Abood was ineffective for failing to request a continuance of the guilty plea hearing or review the plea agreement with Barajas before the hearing. Barajas has failed to allege that, but for counsel's failures, he would have rejected the plea offer and insisted on going to trial. We therefore conclude the district court did not err by denying these claims without first conducting an evidentiary hearing.

Barajas also claimed Abood was ineffective for failing to meet with him in a timely manner upon learning he was dissatisfied with his plea deal shortly after entering the guilty plea. Barajas argued that this resulted in a delay in the filing of his motion to withdraw his guilty plea, which allowed the State to argue prejudice and decreased the likelihood that the district court would look favorably on the motion. Barajas failed to demonstrate a reasonable probability of a different outcome. The State did not argue that it would be prejudiced if Barajas withdrew his plea, and the district court did not indicate that the timing of the motion factored into its

decision to deny it. We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Tao


_____, J.
Gibbons


_____, J.
Bulla

cc: Hon. Douglas W. Herndon, District Judge
Law Office of Betsy Allen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk