

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCISCO CONTRERAS-DEJESUS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68936

FILED

MAY 18 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the direct court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant Francisco Contreras-Dejesus argues the district court erred in denying his August 6, 2015, petition.² To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction

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

²Contreras-Dejesus also asserts the district court erred by accepting his guilty plea and sentencing him to serve 6 to 15 years in prison. A review of the record before this court reveals Contreras-Dejesus did not raise independent claims of district court error in his petition. Because Contreras-Dejesus did not demonstrate cause for his failure to raise these claims before the district court, we decline to consider these claims in the first instance. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

based on a guilty plea, a petitioner must demonstrate that 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).

First, Contreras-Dejesus argues his counsel was ineffective for failing to investigate the deceased driver's reckless driving. Contreras-Dejesus also asserts counsel was ineffective for failing to investigate the accident scene or the police report, as Contreras-Dejesus argues the accident scene was altered after the accident. Contreras-Dejesus fails to demonstrate his counsel's performance was deficient or resulting prejudice. Contreras-Dejesus fails to demonstrate counsel could have uncovered favorable evidence through reasonably diligent investigation into these issues. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming counsel did not conduct an adequate investigation must specify what a more thorough investigation would have uncovered). Because Contreras-Dejesus does not demonstrate favorable evidence could have been uncovered through reasonably diligent investigation, he fails to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel conducted further investigation. Therefore, the district court did not err in denying this claim.

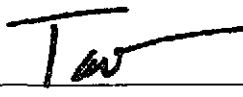
Second, Contreras-Dejesus argues his counsel coerced him into pleading guilty by asserting he would face a lengthier sentence if he did not enter a guilty plea. Contreras-Dejesus also asserts he did not fully understand the consequences of his guilty plea. Even assuming Contreras-Dejesus' counsel informed him he would receive a lesser sentence by pleading guilty, Contreras-Dejesus does not demonstrate resulting prejudice. Contreras-Dejesus acknowledged in the guilty plea agreement and at the plea canvass that he was not promised a lenient sentence by anyone, that he entered his guilty plea voluntarily, and that he did not act under duress or coercion. Moreover, the guilty plea agreement, which Contreras-Dejesus signed and acknowledged having read, informed him of the possible range of sentences, and that the district court had the discretion as to his ultimate sentence. In addition, Contreras-Dejesus was informed at the plea canvass of the possible sentences, and that the district court maintained discretion over the appropriate sentence. Contreras-Dejesus fails to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel had additional discussions with him regarding his guilty plea. Therefore, the district court did not err in denying this claim.

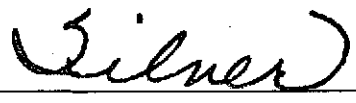
Third, Contreras-Dejesus argues his counsel failed to file a direct appeal despite Contreras-Dejesus' request that he do so following the sentencing hearing. Contreras-Dejesus' fails to demonstrate either deficiency or prejudice for this claim. Contreras-Dejesus' expressly waived the right to a direct appeal as a term of the plea negotiations. Thus,

counsel was not ineffective for failing to file a direct appeal under these circumstances. Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Francisco Contreras-Dejesus
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk