

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BESHOY BOGHDADI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70762

FILED

OCT 11 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Beshoy Boghdadi appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on November 5, 2015. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Ineffective assistance of counsel

Boghdadi asserts the district court erred by denying his petition because he was deprived of effective assistance of counsel. To establish ineffective assistance of counsel, a petitioner must demonstrate 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, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Both components of the ineffective-assistance inquiry—deficiency and prejudice—must be shown. *Id.* at 697. We review the district court's resolution of ineffective-assistance claims de novo, giving deference to the district court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

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First, because robbery with the use of a deadly weapon is a nonprobationable offense, Boghdadi claims defense counsel was ineffective for telling him if he signed the plea agreement he would more than likely receive probation. We decline to address this claim because it was not raised in Boghdadi's petition or considered by the district court in the first instance. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 103 P.3d 25 (2003).

Second, Boghdadi claims defense counsel was ineffective for arguing for probation at sentencing because robbery with the use of a deadly weapon is a nonprobationable offense. We decline to address this claim because it was not raised in Boghdadi's petition or considered by the district court in the first instance. *See id.*

Third, Boghdadi claims defense counsel was ineffective for failing to object to incorrect and harmful information in the presentence investigation report (PSI). The district court found this claim was belied by the record. The district court's factual finding is supported by the record and is not clearly wrong,¹ and we conclude the district court did not err by rejecting this claim. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (a petitioner is not entitled to postconviction relief if his claims are bare or belied by the record).

Fourth, Boghdadi claims defense counsel was ineffective for failing to object when the State introduced his juvenile history at sentencing

¹The sentencing transcript plainly demonstrates that defense counsel argued the home-invasion-with-the-use-of-a-deadly-weapon count listed on the PSI was incorrect, and this is the only PSI error Baghdadi identified in his habeas petition.

because it was not included in his PSI. We decline to address this claim because it was not raised in Boghdadi's petition or considered by the district court in the first instance. *See Davis*, 107 Nev. at 606, 817 P.2d at 1173.

Fifth, Boghdadi claims defense counsel was ineffective for failing to interview witnesses and alleged victims. The district court found this claim was a bare assertion that did not warrant postconviction relief. The district court's factual finding is supported by the record and is not clearly wrong, and we conclude the district court did not err by rejecting this claim. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225; *see also 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).

Sixth, Boghdadi claims defense counsel was ineffective for failing to provide him with discovery before he entered his *Alford*² plea. Boghdadi did not raise this claim in his habeas petition. To the extent Boghdadi claimed defense counsel failed to request discovery, the district court found his claim was belied by the record. The district court's factual finding is supported by the record and is not clearly wrong, and we conclude the district court did not err by rejecting this claim. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

Alford plea

Boghdadi asserts the district court erred by denying his petition because he should have been allowed to withdraw his *Alford* plea. 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

²*North Carolina v. Alford*, 400 U.S. 25 (1970).

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 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).

First, Boghdadi claims he should have been allowed to withdraw his *Alford* plea because defense counsel told him he would receive probation if he signed the plea agreement and defense counsel argued for probation at sentencing despite the fact robbery with the use of a deadly weapon is a nonprobationable offense. We decline to address this claim because it was not raised in Boghdadi’s petition or considered by the district court in the first instance. *See Davis*, 107 Nev. at 606, 817 P.2d at 1173 (1991).

Second, Boghdadi claims he should have been allowed to withdraw his *Alford* plea because he protested his innocence prior to sentencing. We decline to address this claim because it was not raised in Boghdadi’s petition or considered by the district court in the first instance. *See id.*

Third, Boghdadi claims he should have been allowed to withdraw his *Alford* plea because defense counsel was ineffective. In his habeas petition, Boghdadi claimed defense counsel coerced him into accepting the plea negotiation. The district court found this claim was belied by the record, which demonstrates Boghdadi signed the plea agreement freely and voluntarily and the district court accepted his *Alford*

plea. The district court's factual finding is supported by the record and is not clearly wrong, and we conclude the district court did not err by rejecting this claim. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

Evidentiary hearing


Boghdadi claims the district court erred by denying his petition without an evidentiary hearing. A petitioner is entitled to an evidentiary hearing only if he has asserted specific factual allegations that are not belied or repelled by the record and, if true, would entitle him to relief. *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008). "A claim is 'belied' when it is contradicted or proven false by the record as it existed at the time the claim was made." *Mann v. State*, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). We review a district court's determination that a petitioner is not entitled to an evidentiary hearing for abuse of discretion. *Berry v. State*, 131 Nev. ___, ___, 363 P.3d 1148, 1156 (2015). We conclude Boghdadi failed to present any claims that would have entitled him to relief and therefore the district court did not abuse its discretion by denying his petition without an evidentiary hearing.

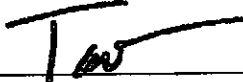
Postconviction counsel

Boghdadi claims the district court erred by denying his petition without appointing postconviction counsel. The Nevada Supreme Court has recently "stressed the decision 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. ___, ___, 391 P.3d 760, 762 (2017). Here, the record demonstrates Boghdadi

had a meaningful opportunity to present his claims to the district court and we conclude the district court did not abuse its discretion by denying his petition without appointing postconviction counsel.

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Valerie Adair, District Judge
Law Offices of Thomas Stafford II
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk