

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OSSIRIS DIZON LYNCH, A/K/A
OSSIRUS DIZON LYNCH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70781

FILED

APR 19 2017

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

ORDER OF AFFIRMANCE

Appellant Ossiris Dizon Lynch appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on August 24, 2015. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Ineffective assistance of counsel

Lynch claims the district court erred by failing to find defense counsel was ineffective. Lynch argues defense counsel misrepresented the possible outcomes at sentencing, failed to explain the district court ultimately had discretion to impose a statutorily prescribed sentence, and lead him to believe his sentence could not possibly include prison time.

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. Washington*, 466 U.S. 668, 687 (1984). To demonstrate prejudice sufficient to invalidate a judgment of

conviction based on a guilty plea, the petitioner must show, but for trial counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the ineffective-assistance inquiry—deficiency and prejudice—must be shown. *Strickland*, 466 U.S. at 697. We review the district court's resolution of ineffective-assistance claims de novo, giving deference to the 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).

The district court found Lynch's claim was belied by the record because he acknowledged in his guilty plea agreement, and in open court, he understood he could be sentenced to one to ten years in prison, probation was up to the discretion of the judge, and he had not been promised or guaranteed any particular sentence by anyone. The record supports the district court's factual findings. We conclude Lynch failed to demonstrate defense counsel was ineffective and the district court did not err by rejecting his ineffective-assistance-of-counsel claim.

Validity of guilty plea

Lynch claims the district court erred by finding his guilty plea was made voluntarily. Lynch argues he entered his guilty plea involuntarily because defense counsel misrepresented the possible outcomes at sentencing and promised him a sentence that would not include prison time.

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 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).


The district court found Lynch’s claim was belied by the record because he had acknowledged in his guilty plea agreement, and in open court, he understood he could be sentenced to one to ten years in prison, no one could promise him probation, and sentencing was completely up to the judge. The record on appeal supports the district court’s findings. We conclude Lynch failed to demonstrate manifest injustice and the district court did not err by rejecting his challenge to the validity of his guilty plea.

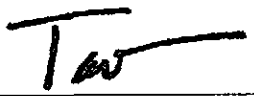
Evidentiary hearing


Lynch claims the district court erred by failing to hold an evidentiary hearing on his ineffective-assistance-of-counsel claim and challenge to the validity of his guilty plea. A petitioner is only entitled to an evidentiary hearing 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). We review the 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). Here, the district court determined an evidentiary hearing was not warranted because Lynch's claims were belied by the record. We conclude the district court did not abuse its discretion in this regard.

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas Smith, District Judge
Harper Selim
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk