

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THOMAS MICHAEL BOLICH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70856

**FILED**

APR 19 2017

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

*ORDER OF AFFIRMANCE*

Appellant Thomas Michael Bolich appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on October 1, 2014. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

*Validity of guilty plea*

Bolich claims the district court erred by finding his guilty plea was freely, voluntarily, and knowingly entered because he believed he was eligible for the Serious Offender Program and the sentencing structure outlined in the plea agreement would apply even if he was ineligible for the Serious Offender Program.

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 conducted an evidentiary hearing and made the following findings: Bolich did not testify credibly at the evidentiary hearing. Bolich knew before he entered his guilty plea he was not eligible for the Serious Offender Program. Bolich also knew he was not promised any particular sentence, his sentence was entirely within the discretion of the district court, and the State would regain the right to argue for any legal sentence if he failed to appear at any subsequent hearing in his case. Bolich failed to appear at sentencing and remained on bench warrant status for over a year. And Bolich's own conduct caused him to receive a sentence greater than that for which he originally bargained.

We conclude the record on appeal supports the district court's findings, Bolich failed to demonstrate manifest injustice, and the district court did not err by rejecting Bolich's challenge to the validity of his guilty plea.

*Ineffective assistance of counsel*

Bolich claims the district court erred by failing to find defense counsel was ineffective. Bolich argues defense counsel was ineffective for advising him to accept the plea negotiations based on a belief he would be eligible for the Serious Offender Program and he would receive an additional six months of credit for time served.

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

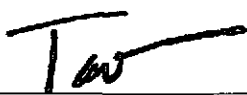
on going to trial. *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the ineffective-assistance inquiry—deficiency and prejudice—must be shown. *Strickland*, 466 U.S. at 697. We review the district court's resolution of ineffective-assistance claims de novo, giving 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 conducted an evidentiary hearing and made the following findings: Bolich did not testify credibly at the evidentiary hearing. Neither the plea negotiations nor defense counsel's representations mislead Bolich into thinking he was entitled to participate in the Serious Offender Program and receive additional credit for time served. The credit for time served was not miscalculated and Bolich was not entitled to additional credit for time served.

We conclude the record on appeal supports the district court's factual findings, Bolich failed to demonstrate defense counsel was ineffective, and the district court did not err by rejecting Bolich's ineffective-assistance-of-counsel claims.

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

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Ornoz, Ericsson & Gaffney, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk