

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AARON JEROME,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74397-COA

FILED

JUL 30 2019

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

ORDER OF AFFIRMANCE

Aaron Jerome appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Jerome claims the district court erred by finding his plea was valid and he should not be allowed to withdraw his plea based on a manifest injustice. In his petition, Jerome claimed counsel were ineffective for failing to inform him that he faced mandatory deportation prior to his pleading guilty. Specifically, he asserted it is clear that attempted grand larceny was an aggravated felony pursuant to 8 U.S.C. 1101(a)(43)(G), (U), and, therefore, he was subject to mandatory deportation pursuant to 8 U.S.C. 12279(a)(2)(A)(iii). He claimed that because deportation was mandatory, his counsel were required to specifically inform him he would be deported if he pleaded guilty to attempted grand larceny. Further, he claimed counsels' failure to so inform him caused his plea to be invalid.

After sentencing, a district court may permit a petitioner to withdraw his guilty plea where necessary "[t]o correct manifest injustice." NRS 176.165. "A guilty plea entered on advice of counsel may be rendered invalid by showing manifest injustice through ineffective assistance of

counsel.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008). To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate 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).

We give deference to the court’s factual findings if supported by substantial evidence and not clearly erroneous but review the court’s application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). We review claims of manifest injustice for abuse of discretion. *Rubio*, 124 Nev. at 1039, 194 P.3d at 1229. To warrant an evidentiary hearing, a petitioner must allege specific facts that, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

The district court found Jerome failed to demonstrate attempted grand larceny was clearly an aggravated felony that was subject to mandatory deportation. The district court found *Padilla* requires counsel to specifically advise his client of potential immigration consequences when they are truly clear, but he only has to advise his client there may be possible immigration consequences when they are unclear. *Padilla v. Kentucky*, 559 U.S. 356, 369 (2010). Here, counsel would have had to engage in an extra analysis, other than just reading the statute, to determine whether attempted grand larceny fits within the Immigration and

Nationality Act's definition of theft. *See Moncrieffe v. Holder*, 569 U.S. 184, 190 (2013) (discussing the categorical approach to determining whether a state crime qualifies as an aggravated felony). Because counsel would have had to apply the categorical approach to determine whether the crime was an aggravated felony, the immigration consequences were not clear, and the district court determined counsel only had to inform Jerome of the *possible* immigration consequences.

The district court found the following facts: Jerome was informed in the guilty plea agreement that his conviction would

likely result in serious negative immigration consequences including but not limited to: 1. The removal from the United States through deportation; 2. An inability to reenter the United States; 3. The inability to gain United States citizenship or legal residency; 4. An inability to renew and/or retain any legal residency status; and/or 5. An indeterminate term of confinement, with the United States Federal Government based on [his] conviction and immigration status.


He informed the district court at the change of plea hearing that he had read and understood the plea agreement. He also stated he had discussed his case and his rights with his attorney. Further, the district court specifically asked him if he understood that if he was not a United States citizen he could be deported based on the guilty plea. Jerome indicated he understood. Based on these findings, the district court concluded counsel was not deficient and Jerome did not demonstrate manifest injustice, because counsel had properly informed Jerome of the possible immigration consequences.


The district court's factual findings are supported by substantial evidence, and we conclude the district court did not err by concluding Jerome failed to demonstrate counsel was deficient. *See*

Moncrieffe, 569 U.S. at 190; *Padilla*, 559 U.S. at 369. Accordingly, we conclude the district court did not err by denying the petition without holding an evidentiary hearing, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Makris Legal Services, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk