

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PERRY ALLISON HOOD,
Appellant,
vs.
ISIDRO BACA, WARDEN, NORTHERN
NEVADA CORRECTIONAL CENTER;
AND E.K. MCDANIEL, DIRECTOR,
NEVADA DEPARTMENT OF
CORRECTIONS,
Respondents.

No. 72870

FILED

MAY 16 2018

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

ORDER OF AFFIRMANCE

Perry Allison Hood appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on July 7, 2014, and supplemental petition filed on July 8, 2016. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

We previously ordered Hood to show cause why the appeal should not be dismissed for lack of jurisdiction because the district court order did not address all of the claims he raised below. *See Hood v. Warden*, Docket No. 72870 (Order to Show Cause, April 19, 2018). In his timely response, Hood confirms he abandoned the claims raised in his initial petition. He also contends that, although the district court did not acknowledge his claim that counsel was ineffective for advising him to plead to a charge for which there was insufficient evidence, the claim was

implicitly addressed when the district court found sufficient evidence of the crime. In light of Hood's representations, we conclude we have jurisdiction over this appeal.


Hood contends the district court erred by denying his supplemental petition. The district court denied Hood's supplemental petition for failing to demonstrate a reasonable probability he would not have pleaded guilty had counsel acted as Hood now advocates.

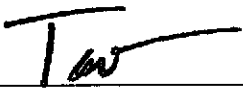
To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability that, 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). To that end, a petitioner must plead specific facts regarding each prong of the ineffective-assistance analysis that, if true and not belied by the record, would afford him relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984); *see also Strickland v. Washington*, 466 U.S. 668, 697 (1984) (emphasizing that both prongs of the ineffective-assistance analysis must be shown).

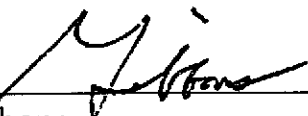
In his supplemental petition, Hood failed to specifically allege that, but for counsel's claimed errors, he would not have pleaded guilty but

would have insisted on going to trial. He thus failed to allege specific facts that, if true, would have entitled him to relief. We therefore conclude the district court did not err by denying Hood's supplemental petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

¹The district court also denied Hood's supplemental petition as outside the scope of claims permissible in a postconviction petition for a writ of habeas corpus arising out of a guilty plea. See NRS 34.810(1)(a). Hood did not challenge this basis in his opening brief, but we conclude the district court erred in relying on this alternative basis. Hood's supplemental petition consisted of several claims of ineffective assistance of counsel. By the plain language of NRS 34.810(1)(a), a petitioner who alleges his "guilty plea was entered without effective assistance of counsel" has raised a claim within the scope of Nevada's postconviction habeas scheme. If a petitioner establishes his plea was entered without the effective assistance of counsel, he has demonstrated his guilty plea was invalid. See *Hill*, 474 U.S. at 58-59. We nevertheless affirm the district court's decision based on its alternative ground as discussed above.

cc: Hon. Robert W. Lane, District Judge
Law Office of David R. Houston
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk