

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICHOLAS SCOTT BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70400

FILED

FEB 23 2017

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

ORDER OF AFFIRMANCE

Appellant Nicholas Scott Brown appeals from an order of the district court denying his December 10, 2015, postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Brown argues the district court erred in denying his claims of ineffective assistance of counsel. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that 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.*

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984).

First, Brown argued his counsel was ineffective for failing to file a notice of appeal. Brown failed to demonstrate that he was improperly deprived of a direct appeal. “[T]rial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction.” *Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011). Brown did not claim he asked counsel to file an appeal and counsel failed to do so, and he did not allege he expressed the type of dissatisfaction which would have required counsel to file a notice of appeal. *See id.* at 978-79, 267 P.3d at 800-01. Further, Brown specifically waived his right to appeal in the written plea agreement. Therefore, we conclude the district court did not err in denying this claim.

Second, Brown argued his counsel was ineffective for failing to ensure he was informed of the possible range of punishments he faced by entry of his guilty plea. Brown failed to demonstrate his counsel’s performance was deficient or resulting prejudice. This claim is belied by the record because the written plea agreement, which Brown acknowledged having read, informed Brown of the potential punishments and the direct consequences he faced through his guilty plea. *See Palmer v. State*, 118 Nev. 823, 826, 59 P.3d 1192, 1194 (2002) (stating “[d]irect consequences have an automatic and immediate effect on the nature or length of a defendant’s punishment; collateral consequences do not.”).

Brown failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel further ensured he was informed of the available range of punishments. Therefore, we conclude the district court did not err in denying this claim.²

Next, Brown argues the district court erred in declining to appoint postconviction counsel to represent him. The appointment of postconviction counsel was discretionary in this matter. See NRS 34.750(1). After a review of the record, we conclude the district court did not abuse its discretion in this regard as this matter was not sufficiently complex so as to warrant the appointment of postconviction counsel.

Finally, Brown argues the district court erred by denying his petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations that are not belied by the record, and if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). The district court concluded Brown's claims did not meet that standard and the record before this court reveals the district court's conclusions in this regard were proper. Therefore, the district court

²Brown also appeared to assert he should be entitled to withdraw his guilty plea stemming from the failure to be informed of the possible punishments he faced. Because Brown was informed of the available range of punishments and the direct consequences stemming from his guilty plea, he failed to demonstrate withdrawal of his plea was necessary to correct a manifest injustice. See NRS 176.165.

properly denied the petition without conducting an evidentiary hearing.
Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Silver, C.J.
Silver

Tao, J.
Tao

Gibbons, J.
Gibbons

cc: Hon. Richard Scotti, District Judge
Nicholas Scott Brown
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk