

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESSIE MATTHEW DIAZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70568

**FILED**

JUL 12 2017

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

*ORDER OF AFFIRMANCE*

Jessie Matthew Diaz appeals from orders of the district court granting in part and dismissing in part a postconviction petition for a writ of habeas corpus.<sup>1</sup> Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Diaz argues the district court erred in dismissing a claim raised in his April 22, 2014, petition without considering it at the evidentiary hearing. 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. State*, 112

---

<sup>1</sup>The district court granted Diaz relief for his appeal deprivation claim and Diaz pursued a direct appeal pursuant to NRAP 4(c). This court considered Diaz' direct appeal and affirmed Diaz' judgment of conviction. *Diaz v. State*, Docket No. 70543 (Order of Affirmance, April 19, 2017).

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). 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).

Diaz argued his counsel was ineffective for inducing him into entering a guilty plea. Diaz asserted counsel should have known or investigated his background and education, as well as his mental and emotional limitations, because those issues caused him to not properly understand the terms and nature of the guilty plea agreement. Diaz further argued counsel should have made accommodations regarding his intellect and mental issues to ensure he understood the guilty plea agreement. Diaz failed to demonstrate his counsel's performance was deficient or resulting prejudice.


Diaz did not identify any evidence counsel could have uncovered through reasonably diligent investigation into these issues. Accordingly, Diaz did not meet his burden to demonstrate his counsel acted in an objectively unreasonable manner or a reasonable probability he would have refused to plead guilty and insisted on proceeding to trial had counsel investigated Diaz' background, education, and mental or emotional limitations. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).


Further, in the written plea agreement, Diaz asserted he understood all matters contained within that agreement, including the charges and possible sentences, and he asserted his counsel had carefully explained the plea agreement to him. Moreover, at the plea canvass, Diaz

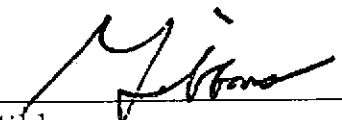
informed the district court he had discussed the plea agreement with his counsel, he understood the agreement, and he then entered a guilty plea pursuant to the agreement.

Under these circumstances, Diaz failed to demonstrate his counsel induced him to accept a guilty plea agreement he did not understand and Diaz did not demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel made further efforts to explain the guilty plea agreement. As Diaz' claim was not supported by specific allegations that are not belied by the record and because his claim would not have entitled him to relief, the district court properly dismissed it without considering it at the evidentiary hearing. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225; *see also Mann v. State*, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002) ("A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Patrick Flanagan, District Judge  
Troy Curtis Jordan  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk