

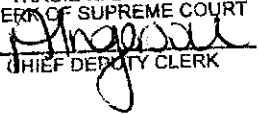
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE VILLANUEVA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69330

**FILED**

SEP 20 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Appellant Jose Villanueva argues the district court erred in denying his claim of ineffective assistance of counsel raised in his November 7, 2014, petition without conducting an 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 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 factual allegations that are not belied by the record and, if true,

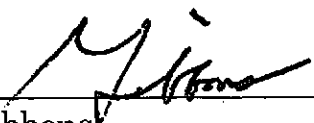
would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).


Villanueva argues his counsel was ineffective for failing to investigate the case, prepare for trial, or communicate with him. Villanueva asserts these issues forced him to plead guilty rather than proceed to trial with an ill prepared counsel. Villanueva fails to demonstrate his counsel's performance was deficient or resulting prejudice. Villanueva does not demonstrate counsel could have uncovered favorable evidence through reasonably diligent investigation. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming counsel did not conduct an adequate investigation must "address[] the quality of evidence that [counsel] would have developed with additional preparation"). Villanueva merely speculates counsel could have uncovered favorable information and does not demonstrate that investigation would have revealed favorable evidence. Further, Villanueva fails to specify what counsel should have done to prepare for trial or how further communication would have altered the proceedings. A bare claim, such as this one, is insufficient to demonstrate a petitioner is entitled to relief. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

Further, Villanueva acknowledged in the written plea agreement that he did not act under duress or coercion and asserted at the plea canvass that no one had forced or coerced him to enter a guilty plea. Villanueva also acknowledged in the written plea agreement and at the plea canvass that he had discussed possible defenses with his attorney and his attorney had answered all of his questions regarding the plea agreement.

In addition, Villanueva received a substantial bargain by entry of his guilty plea, as Villanueva originally faced 17 charges involving the sexual abuse of a child. Accordingly, Villanueva fails to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel further investigated, prepared for trial, or communicated with him. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

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

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

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

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

cc: Hon. Carolyn Ellsworth, District Judge  
Nguyen & Lay  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk