

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEREMY SIGAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69016

FILED

JUN 14 2017

ELIZABETH A. BROWN
CLERK OF SUPERIOR COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jeremy Sigal appeals from the district court order denying the postconviction petition for a writ of habeas corpus he filed on July 15, 2015. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Sigal claims the district court erred by rejecting his claim that his guilty plea was not entered knowingly, intelligently, or voluntarily. After sentencing, a district court may permit a petitioner to withdraw a 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 a manifest injustice through ineffective assistance of counsel. Manifest injustice may also be demonstrated by a failure to adequately inform a defendant of the consequences of his plea.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228-29 (2008) (footnote and internal quotation marks omitted). We review a district court’s manifest injustice determination for abuse of discretion but review claims of ineffective assistance of counsel de novo. *Id.* at 1039, 194 P.3d at 1229.

The district court found Sigal’s challenge to the validity of his guilty plea was a bare allegation and lacked factual support. *See Hargrove*

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v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (a petitioner is not entitled to postconviction relief if his claims are bare or belied by the record). To the extent Sigal now argues his guilty plea is invalid because its factual basis was inadequate and he is actually innocent, he did not make these arguments in the court below and we decline to consider them on appeal. See *Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 103 P.3d 25 (2004). We conclude the record supports the district court's finding, Sigal failed to demonstrate manifest injustice, and the district court did not err by rejecting Sigal's challenge to the validity of his guilty plea.

Next, Sigal claims the district court erred by rejecting his ineffective assistance of counsel claims. To prevail on a claim of ineffective assistance of counsel, a petitioner must show (1) counsel's performance was deficient because it fell below an objective standard of reasonableness and (2) the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To demonstrate prejudice sufficient to invalidate a judgment of conviction based on a guilty plea, the petitioner must show but for trial counsel's errors the outcome would have been different. *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the ineffective-assistance inquiry—deficiency and prejudice—must be shown. *Strickland*, 466 U.S. at 697. We review the district court's resolution of ineffective-assistance claims de novo, giving deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

In his petition, Sigal raised claims that (1) counsel was ineffective for failing to fully investigate his case before advising him to plead guilty, (2) counsel was ineffective for failing to file pretrial motions or petitions before advising him to plead guilty, and (3) counsel was ineffective for failing to challenge his termination from the felony DUI diversion program during the termination hearing and at sentencing.¹

The district court found Sigal's claims that counsel failed to fully investigate his case and to challenge his termination from the diversion program were bare allegations. The district court further found Sigal's claim that counsel failed to file pretrial motions did not include specific factual allegations to show the pretrial motions or petitions would have been successful. The district court's factual findings are supported by the record and are not clearly wrong, and we conclude Sigal failed to demonstrate he was prejudiced by counsel's representation. *See Means*, 120 Nev. at 1012, 103 P.3d at 33 (petitioner bears the burden of proving ineffective assistance of counsel); *see also Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (holding counsel cannot be deemed ineffective for failing to make a futile motion); *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.


Finally, Sigal claims the district court erred by denying his habeas petition without an evidentiary hearing. He argues his claims were not belied by the record. A petitioner is entitled to an evidentiary

¹We note Sigal raised other ineffective-assistance-of-counsel claims in his petition, but he has not challenged the denial of those claims on appeal. To the extent he now argues the district court erred by terminating him from the felony DUI diversion program, he did not make this argument in the court below and we decline to consider it on appeal. *See Davis*, 107 Nev. at 606, 817 P.2d at 1173.

hearing only if he has asserted specific factual allegations that are not belied or repelled by the record and, if true, would entitle him to relief. *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008). “A claim is ‘belied’ when it is contradicted or proven false by the record as it existed at the time the claim was made.” *Mann v. State*, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). We review a district court’s determination that a petitioner is not entitled to an evidentiary hearing for abuse of discretion. *Berry v. State*, 131 Nev. ___, ___, 363 P.3d 1148, 1156 (2015). We conclude Sigal failed to present any claims that would have entitled him to relief and therefore the district court did not abuse its discretion by denying his petition without conducting an evidentiary hearing.

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. William D. Kephart, District Judge
Dayvid J. Figler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk