

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DERRICK SHANNON VINCENT, A/K/A
DERRICK DELEON VINCENT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70257

FILED

FEB 23 2017

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

ORDER OF AFFIRMANCE

Appellant Derrick Shannon Vincent appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on August 12, 2015.¹ Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Validity of guilty plea

Vincent claimed his guilty plea was not entered voluntarily and knowingly because he entered it under extreme duress and he was not made aware of its consequences.

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 manifest injustice occurs where a defendant makes a plea involuntarily or without knowledge of the consequences of the plea or where the plea is entered without knowledge of the charge or that the sentence actually imposed could be imposed.” *State v. James*, 500 N.W.2d

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

345, 348 (Wis. Ct. App. 1993) (internal quotation marks omitted). “[We] will not overturn the district court’s determination on manifest injustice absent a clear showing of an abuse of discretion.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1229 (2008) (internal quotation marks omitted).

The district court found the guilty plea agreement was signed by Vincent and clearly outlined the consequences of the plea negotiation and the rights Vincent was waiving. Vincent entered into the guilty plea agreement with the advice and assistance of counsel and acknowledged he was entering into the agreement freely and voluntarily. Vincent was thoroughly canvassed on his decision to plead guilty and acknowledged he understood the consequences of pleading guilty.

The district court’s findings are supported by the record and we conclude Vincent failed to demonstrate manifest injustice. Accordingly, the district court did not err in rejecting this claim.

Ineffective assistance of counsel

Vincent claimed he was deprived of effective assistance of counsel. 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, he would not have pleaded guilty and would have insisted on going to trial. *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).

First, Vincent claimed counsel was ineffective for failing to investigate his competency; obtain jail, prison, and medical files; and evaluate his willingness or unwillingness to enter into the guilty plea agreement. The district court found Vincent failed to show how a more thorough investigation or preparation would have made any difference in his case and his bare allegations were insufficient to warrant postconviction relief. The record supports the district court's finding and we conclude it did not err in rejecting this claim. *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 specify what a more thorough investigation would have uncovered).

Second, Vincent claimed counsel was ineffective for coercing him into entering a guilty plea. The district court found this claim was belied by the record, which demonstrated Vincent entered into the guilty plea agreement with the advice and assistance of counsel and acknowledged he was entering into the agreement freely and voluntarily. The record supports the district court's finding and we conclude it did not err in rejecting this claim. *See Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (a petitioner is not entitled to postconviction relief if his factual allegations are belied by the record).

Third, Vincent claimed counsel was ineffective for failing to communicate with him and appear in court on his behalf and this ineffectiveness gave rise to a pro se motion to withdraw the guilty plea.

The district court found this claim was belied by the record, which demonstrated counsel was present on Vincent's behalf during the initial arraignment, when he filed his guilty plea agreement in open court and pleaded guilty, and at his sentencing. The record further revealed Vincent never filed a motion to withdraw his guilty plea. The record supports the district court's finding and we conclude it did not err in rejecting this claim. *See Hargrove*, 100 Nev. at 503, 686 P.2d at 225.

Fourth, Vincent claimed counsel was ineffective for failing to ensure he was placed in drug court and his North Las Vegas misdemeanor warrant was quashed as required by the terms of the guilty plea agreement.² The district court found this claim was belied by the record and Vincent received the full benefit of his plea bargain. The record supports the district court's finding and we conclude it did not err in rejecting this claim. *See Hargrove*, 100 Nev. at 503, 686 P.2d at 225.

Fifth, Vincent claimed counsel was ineffective for failing to mitigate the outcome of his sentencing. The district court found Vincent pleaded guilty and received probation, he has not demonstrated what further argument at sentencing would have accomplished, and he failed to assert precisely what counsel should have presented to the district court. The record supports the district court's finding, and we conclude it did not err in rejecting this claim.

Sixth, Vincent claimed the cumulative effect of counsel's errors deprived him of a fair criminal proceeding and sentencing. The district

²To the extent Vincent claimed the State breached the guilty plea agreement, his claim fell outside the narrow scope of claims permitted in a habeas petition challenging a judgment of conviction based on a guilty plea. *See NRS 34.810(1)(a)*.

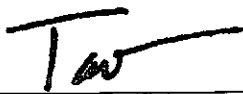
court found Vincent had failed to demonstrate a single instance of ineffective assistance of counsel and, therefore, there was nothing to cumulate. The record supports the district court's finding, and we conclude it did not err in rejecting this claim.


Evidentiary hearing

Vincent claimed he was entitled to an evidentiary hearing. The district court found each and every one of Vincent's claims for relief was belied by the record and, therefore, he was not entitled to an evidentiary hearing. We conclude the district court did not err in this regard. See NRS 34.770(2); *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008) (explaining a petitioner's habeas claims must consist of more than bare allegations, and he is only entitled to an evidentiary hearing if he has asserted specific factual allegations that are not belied or repelled by the record and, if true, would entitle him to relief).

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kathleen E. Delaney, District Judge
Derrick Shannon Vincent
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk