

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICHOLAS ANTHONY NAVARRETTE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70171

**FILED**

FEB 23 2017

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

*ORDER OF AFFIRMANCE*

Appellant Nicholas Anthony Navarrette appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on October 7, 2015.<sup>1</sup> Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

*Ineffective assistance of counsel*

Navarrette 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

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<sup>1</sup>This 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).

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, Navarrette claimed counsel was ineffective for promising him that his sentence would be 20 to 50 years or 20 years to life and it would not be life without the possibility of parole. The district court found this a bare claim and it was belied by the record, which revealed the guilty plea agreement specifically informed Navarrette he would be sentenced to life without the possibility of parole, Navarrette signed the guilty plea agreement voluntarily after consulting with counsel, and Navarrette understood the penalty range for his crimes and the district court's sentencing discretion. The record supports the district court's findings, 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).

Second, Navarrette claimed counsel was ineffective for refusing to go to trial. The district court found this was a bare claim and it was belied by the record, which revealed Navarrette acknowledged he pleaded guilty because there was a substantial likelihood that he would be convicted of more serious charges and exposed to harsher penalties if he

proceeded to trial. The record supports the district court's findings, and we conclude it did not err in rejecting this claim. *See id.*

Third, Navarrette claimed counsel was ineffective for coercing him to entering into the guilty plea agreement. The district court found this was a bare claim and it was belied by the record, which revealed Navarrette acknowledged he pleaded guilty to avoid exposure to the harsher penalties he would face if convicted at trial, he acknowledged he was not acting under duress or coercion when he signed the guilty plea agreement, and he ultimately made the decision to accept the plea offer. The record supports the district court's findings, and we conclude it did not err in rejecting this claim. *See id.*

Fourth, Navarrette claimed counsel was ineffective for telling him if he failed to accept the plea negotiation there would be no more plea offers and the State would actively seek the death penalty. The district court found this was a bare claim and noted that time limits for accepting plea offers are permissible, a defendant does not have a right to a plea offer, and the State had previously filed a notice of its intent to seek the death penalty. The record supports the district court's finding, and we conclude it did not err in rejecting this claim. *See id.*

Fifth, Navarrette claimed counsel was ineffective for coercing him to entering into the guilty plea agreement despite the fact he had been granted an evidentiary hearing on his challenge to the voluntariness of his police statements. The district court found this was a bare claim and it was belied by the record, which revealed Navarrette acknowledged he was not coerced and voluntarily entered his guilty plea and Navarrette had ample opportunity to notify the district court otherwise and failed to

do so. The record supports the district court's finding, and we conclude it did not err in rejecting this claim. *See id.*

*Procedurally barred claims*

Navarrette's claimed that his involuntary police statements should have been suppressed; the prosecutor committed misconduct by placing a time limitation on the plea offer and stating there would be no further offers; the prosecutor committed misconduct by making sentencing arguments that were not supported by the record, improperly presenting victim impact evidence, and presenting his coerced police statements; and the sentencing judge was biased due "to gender similarities with the victim," and she committed misconduct by allowing the State to make inflammatory statements and present inadmissible victim impact evidence.

The district court found these claims were not properly raised in Navarrette's petition because his underlying conviction was based on a guilty plea and his claims did not allege ineffective assistance of counsel or challenge the validity of the guilty plea. We conclude the district court properly found that these claims were procedurally barred. *See* NRS 34.810(1)(a); *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) ("Application of the statutory procedural default rules to postconviction habeas petitions is mandatory.").

Based on our review of Navarrette's claims, we conclude the district court did not err in denying his habeas petition without appointing counsel or conducting an evidentiary hearing. *See* NRS 34.750(1); NRS

34.770(2). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Silver, C.J.  
Silver

Tao, J.  
Tao

Gibbons, J.  
Gibbons

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Nicholas Anthony Navarrette  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk