

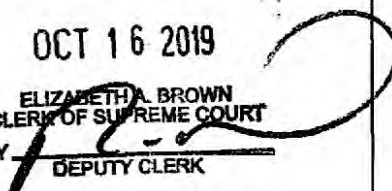
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN EDWARD CANO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77453-COA

FILED

OCT 16 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Steven Edward Cano appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 10, 2018. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Cano contends the district court erred by denying his claims that trial-level counsel was ineffective. To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability 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 supported by specific factual allegations that, if true and not repelled by the record,

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

First, Cano claimed counsel failed to explain the consequences of his guilty plea. To be valid, a defendant must enter his guilty plea with “a full understanding of both the nature of the charges and the *direct consequences* arising from a plea of guilty.” *Rubio v. State*, 124 Nev. 1032, 1038, 194 P.3d 1224, 1228 (2008) (quotation marks omitted). Cano claimed that counsel was in too much of a hurry to review the plea agreement and told Cano that he would be taking the same plea deal that had been offered before. Cano further claimed he would not have pleaded guilty had he known it was not the same deal. The State conceded in its opposition that the plea deal Cano accepted was not identical to the one that had been offered before. If Cano’s claims were true, he was entitled to relief.

The district court concluded Cano’s claims were belied by the record. To determine the validity of a guilty plea, a district court must look at the totality of the circumstances. *Id.* As it relates to Cano’s plea at the time the district court resolved the petition, the record consisted largely of Cano’s written guilty plea agreement.¹ And the written agreement does not belie Cano’s claim that counsel misinformed him of the nature of the plea agreement. Rather, the record is insufficient to determine if the facts surrounding Cano’s guilty plea substantiate his claim for relief. We therefore conclude the district court erred by denying this claim without first conducting an evidentiary hearing.

¹There was no transcript of the plea canvass filed at the time the district court rendered its decision. And the district court judge who resolved the postconviction petition was not the same judge who conducted the plea canvass.


Second, Cano claimed counsel failed to provide him with his presentence investigation report (PSI) in time for Cano to review it and have errors corrected. Cano's bare claim failed to indicate what errors the PSI contained or how it would have resulted in a different outcome.² We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Finally, Cano argues on appeal that he did not receive all of the presentence credit to which he was entitled. Cano failed to properly raise this claim in the district court,³ and we therefore decline to consider it on appeal. *See McNelton*, 115 Nev. at 416, 990 P.2d at 1276.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²Cano provides some detail in his informal brief on appeal. As these facts were not alleged below, we decline to consider them for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

³Cano challenged his presentence credit in an "amended" pleading. However, Cano first had to seek the permission of the district court to file such a pleading, *see* NRS 34.750(5), and nothing in the record suggests he did so. Further, it does not appear the district court considered the amended pleading, because it did not address the new claims raised therein.

cc: Hon. Joseph Hardy, Jr., District Judge
Steven Edward Cano
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk