

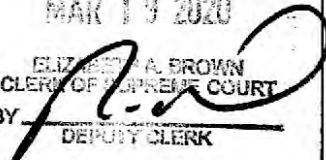
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER HARRY GOODING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78346-COA

FILED

MAR 19 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Christopher Harry Gooding appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 9, 2018. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

First, Gooding claims the district court erred by denying his claims that he received ineffective assistance of counsel. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate 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). We give deference to the court's factual findings if supported by substantial evidence and not clearly

erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

Gooding claimed counsel was ineffective for failing to review the discovery and facts of the case with him. The district court found that in the guilty plea agreement, Gooding affirmed that he and counsel reviewed all of the discovery and discussed all possible defenses prior to Gooding signing the plea agreement. Thus, this claim was belied by the record. The record supports the decision of the district court, and we conclude the district court did not err by denying this claim.

Gooding also claimed counsel was ineffective because he coerced Gooding into pleading guilty. Specifically, he claimed counsel told him this was the best deal he would get, he would only serve two years, and he would serve his time in federal custody. The district court found that in the guilty plea agreement, Gooding affirmed he was not coerced into pleading guilty and that he was not entering into the guilty plea agreement under any promises not included in the plea agreement. The plea agreement informed Gooding that he was facing a minimum of at least two years in prison. While the plea agreement stated that the parties agreed the sentence in this case would run concurrent to any federal case, the parties did not agree that Gooding would serve his time in federal custody. Therefore, the district court found this claim was belied by the record. The record supports the decision of the district court. We also note that counsel is not deficient for giving candid advice about the potential outcomes of pleading guilty. *Cf. Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 69, 412 P.3d 56, 62 (2018) (noting that one of the roles of an attorney is to provide candid advice to his

or her client). Accordingly, we conclude the district court did not err by denying this claim.

Gooding next claimed counsel was ineffective for failing to investigate whether Gooding was actually living at the residence he was accused of burglarizing. The district court found that Gooding pleaded guilty in one count to burglarizing two different residences, apartment number 228 and apartment number 123. The apartment he claims was his residence was apartment 228. According to the presentence investigation report, Gooding moved out of apartment 228 five weeks before the incident. Therefore, he could have been found guilty of burglarizing this residence. Further, there was no allegation that he ever lived in apartment number 123. Therefore, even if his residence were apartment 228, he was still guilty of burglarizing apartment number 123. The record supports the findings of the district court. Therefore, Gooding failed to demonstrate counsel was deficient or a reasonable probability he would not have pleaded guilty had counsel done further investigation. Accordingly, we conclude the district court did not err by denying this claim.

Second, Gooding claims the district court erred by denying his challenge to the validity of his guilty plea. He claimed his guilty plea was not knowingly and voluntarily entered because (1) the guilty plea included the State's right to argue at sentencing, (2) his two-year minimum sentence became a five-year minimum sentence, (3) he is doing his prison time in State custody rather than federal custody, and (4) he did not receive his discovery until five months after sentencing.

A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and

intelligently. *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. *Id.* In determining the validity of a guilty plea, this court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000).


The district court found these claims were belied by the record. Specifically, the district court found that Gooding was informed in the guilty plea agreement that he was facing a minimum of not less than two years, he was not promised in the guilty plea agreement that he would serve his prison time in federal custody, and he agreed in the guilty plea agreement that he and counsel discussed the evidence in the case and all defenses. The record supports the findings of the district court. Further, Gooding failed to support his claim that the State's retention of the right to argue in the guilty plea agreement somehow caused his plea to be unknowing and voluntary. Accordingly, we conclude the district court did not err by denying this claim.

Third, Gooding claimed he was entitled to relief because the State committed prosecutorial misconduct. The district court concluded this claim was outside the scope of claims permissible to be raised in a postconviction petition for a writ of habeas corpus challenging the judgment of conviction based on a guilty plea. *See* NRS 34.810(1)(a). The record supports the decision of the district court, and we conclude the district court did not err by denying this claim.

Finally, Gooding claims the district court erred by denying his petition without appointing postconviction counsel. The appointment of

counsel in this matter was discretionary. *See* NRS 34.750(1). The district court found that the issues were not complex and counsel was not necessary to proceed with investigation or discovery. *See id.* The record supports the decision of the district court, and therefore, Gooding fails to demonstrate the district court abused its discretion by denying the petition without appointing postconviction counsel. *See Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760-61 (2017).

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Douglas W. Herndon, District Judge
Christopher Harry Gooding
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk