

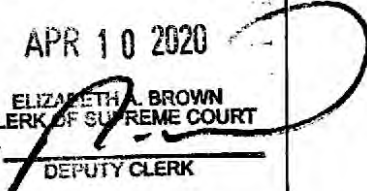
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID DURAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78516-COA

**FILED**

APR 10 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

David Duran appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

In his November 19, 2018, petition, Duran claimed his counsel was ineffective. To prove ineffective assistance of counsel, a petitioner must demonstrate 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, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must demonstrate 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*,

466 U.S. at 697. To warrant an evidentiary hearing, petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Duran claimed his counsel was ineffective for failing to investigate the case. Duran also appeared to assert counsel should have investigated whether to file a motion to suppress the search warrant that permitted a blood draw. Duran only made bare allegations supporting this claim and did not identify any evidence counsel could have uncovered through a reasonable investigation. *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). In addition, Duran did not identify upon what grounds counsel should have moved to suppress the search warrant and a bare claim, such as this one, was insufficient to demonstrate Duran was entitled to relief. *Hargrove*, 100 Nev. at 502, 686 P.2d at 225. Accordingly, Duran failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to plead guilty and insisted on going to trial had counsel undertaken different actions. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Duran claimed his counsel was ineffective for failing to ensure that the State honored the plea agreement. In the plea agreement, the State agreed to argue for no more than a sentence of five to fifteen years. The transcript of the sentencing hearing reveals that the State urged the district court to sentence Duran to serve a sentence totaling five to fifteen

years. The record therefore demonstrates the State honored the plea agreement. Accordingly, Duran failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel argued the State did not honor the plea agreement. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.


Third, Duran claimed his counsel was ineffective for failing to explain the original plea offer. At the plea canvass, Duran's counsel explained the State originally offered to recommend a sentence of two to five years in prison, but the State withdrew that offer after it reviewed Duran's criminal history. Duran stated he understood the situation and that the original plea offer was no longer available. Given the record, Duran failed to demonstrate his counsel's performance was deficient. Duran also failed to demonstrate a reasonable probability of a different outcome had counsel further explained the original plea offer. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fourth, Duran requested the appointment of postconviction counsel, but the district court denied that request. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). A review of the record reveals the issues in this matter were not difficult, Duran was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. *See id.* Therefore, Duran 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). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

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