

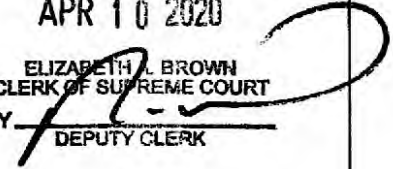
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JIN ACKERMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78588-COA

FILED

APR 10 2020

ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Jin Ackerman appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Ackerman argues the district court erred by denying the claims of ineffective assistance of counsel raised in his November 26, 2018, petition. 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, Ackerman argued his counsel was ineffective for failing to investigate whether the kidnappings were incidental to the robberies. However, Ackerman's counsel filed a pretrial petition for a writ of habeas corpus and asserted in that petition that the kidnappings were incidental to the robberies, but the district court denied the petition. Thus, the record belied Ackerman's claim. *See id.* Ackerman failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel raised the underlying issue in a different manner. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Ackerman argued his counsel was ineffective for failing to investigate his case. A petitioner claiming that counsel should have conducted investigation must identify what the investigation would have revealed. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Ackerman failed to allege what further information counsel could have discovered through an investigation or how any lack of investigation affected his decision to enter a guilty plea. Therefore, Ackerman failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. We conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Ackerman argued his counsel was ineffective for failing to investigate the possibility that Ackerman suffered from mental instability. Ackerman asserted counsel should have investigated this issue for use as both a defense strategy and for sentencing mitigation. Ackerman failed to allege what information counsel could have discovered through an investigation into his mental health or how a lack of investigation affected his decision to enter a guilty plea. Therefore, Ackerman failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. See *id.*

In addition, the record reveals Ackerman's counsel retained a mitigation specialist and filed a sentencing memorandum containing information concerning Ackerman's difficult childhood and mental health difficulties. Considering the record, Ackerman failed to demonstrate his counsel's performance at sentencing fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel discovered additional information concerning Ackerman's mental health. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.


Fourth, Ackerman argued his counsel was ineffective for failing to explain the plea agreement and coercing him into pleading guilty. In the written plea agreement, Ackerman acknowledged that he read the agreement and discussed it with his counsel. Ackerman asserted in the written plea agreement and at the plea canvass that he understood the agreement. Ackerman further acknowledged that he accepted the plea agreement voluntarily and did not act under duress or coercion. Given this

record, Ackerman failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Finally, Ackerman contends the district court erred by denying the petition without appointing postconviction counsel. 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, Ackerman was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. *See id.* Therefore, Ackerman 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 judgement of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Jin Ackerman
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk