

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALVERO SALAS-ISAIAS,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
Respondent.

No. 78841-COA

FILED

MAY 11 2020

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

ORDER OF AFFIRMANCE

Alvero Salas-Isaias appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

Salas-Isaias argues the district court erred by denying the claims of ineffective assistance of counsel raised in his January 2, 2019, 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 that, 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 an *Alford*¹ plea, a petitioner must demonstrate a reasonable probability that, but for counsel's errors, petitioner would not have entered the *Alford* plea and would have insisted on going to trial. See *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v.*

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).

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.

First, Salas-Isaias claimed his counsel was ineffective for failing to prepare for trial, failing to hire an investigator, and failing to investigate the case. Salas-Isaias did not allege how any lack of preparation or investigation affected his decision to enter an *Alford* plea. Furthermore, Salas-Isaias did not demonstrate his counsel could have uncovered favorable evidence through a reasonably diligent investigation. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Accordingly, Salas-Isaias 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 entered an *Alford* plea and would have insisted on going to trial. Therefore, we conclude the district court did not err by denying this claim.

Second, Salas-Isaias claimed his counsel was ineffective at the sentencing hearing for failing to present mitigation evidence, correct errors, or present evidence of his innocence. Salas-Isaias did not identify what evidence counsel should have presented or what errors counsel should have attempted to correct at the sentencing hearing. This was a bare claim that Salas-Isaias failed to support with specific facts that, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Accordingly, Salas-Isaias failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. In addition, the record demonstrates Salas-Isaias stipulated in the plea agreement to a sentence totaling 4 to 11 years in prison and the district court sentenced Salas-Isaias in accordance with that agreement. Given the record and Salas-Isaias' stipulation to a 4-to-11-year sentence, Salas-Isaias

failed to demonstrate a reasonable probability of a different outcome had counsel performed different actions during the sentencing hearing. Therefore, we conclude the district court did not err by denying this claim.

Third, Salas-Isaias claimed he is actually innocent of the crimes and the sentencing court had an implicit bias against him due to his race. However, these claims were not based on an allegation that Salas-Isaias' plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel and, therefore, these claims were not appropriately raised in Salas-Isaias' petition. *See* NRS 34.810(1)(a). Therefore, the district court properly concluded Salas-Isaias was not entitled to relief based upon these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Alvero Salas-Isaias
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk