

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE BRUNO GOMEZ-ARIAS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78876-COA

FILED

JUN 08 2018

ELIZABETH A. CROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jose Bruno Gomez-Arias, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome M. Polaha, Judge.

Gomez-Arias argues the district court erred by denying a claim of ineffective assistance of counsel raised in his October 17, 2017, petition and later-filed supplement. 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown, *Strickland v. Washington*, 466 U.S. 668, 697 (1984), and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103

P.3d 25, 33 (2004). We give deference to the district 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).

Gomez-Arias claimed his counsel was ineffective for reaching an agreement with the State for both parties to recommend consecutive sentences. Gomez-Arias contended he was not aware of such an agreement and he would not have entered a guilty plea had he known his counsel would make such an agreement. At the evidentiary hearing, Gomez-Arias' counsel testified that he reviewed Gomez-Arias' criminal history and concluded that the sentencing court would not impose concurrent terms. Counsel therefore decided to seek shorter, individual terms while acknowledging Gomez-Arias would serve them consecutively so that Gomez-Arias would receive a lesser overall sentence. Based on this decision, counsel testified he reached an agreement with the State to make a joint recommendation. Counsel also testified he discussed this issue with Gomez-Arias prior to the sentencing hearing.

The district court concluded counsel's testimony was credible and that counsel's decisions were reasonable under the circumstances in this case. Substantial evidence supports the district court's findings. And we conclude the district court did not err by determining Gomez-Arias failed to demonstrate his counsel's performance fell below an objectively reasonable standard. In addition, Gomez-Arias did not demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel performed different actions regarding the sentencing recommendation, particularly in light of Gomez-

