

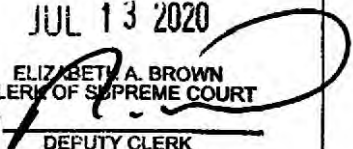
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD ALLAN NEWSOME, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79044-COA

**FILED**

JUL 13 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Richard Allan Newsome, Jr., appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on February 1, 2019. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Newsome claimed his guilty plea was invalid because his counsel tricked him into pleading guilty. He claimed counsel promised him a sentence of 12 to 35 years in prison and that this was borne out by the sentencing transcript. The district court found that Newsome's written plea agreement did not indicate he was promised a particular sentence and Newsome did not tell the court at sentencing that he was promised a particular sentence. These findings are supported by the record. Further, while Newsome commented on a possible sentence during his plea colloquy, the district court sought clarification and Newsome indicated he had not been promised a particular sentence. We therefore conclude the district court did not err by denying this claim.

Newsome also claimed his guilty plea was invalid because counsel coerced him into pleading guilty. He claimed counsel told him he would be sentenced to 25 years to life in prison and his codefendant would

receive a prison sentence if he did not accept the guilty plea. Candid advice about the sentencing possibilities Newsome and his codefendant faced if they were to be convicted at trial do not amount to coercion. *Cf. Dezzani v. Kern & Associates, 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). We therefore conclude the district court did not err by denying this claim.

Next, Newsome claimed counsel was ineffective for failing to advise him regarding filing a direct appeal and not filing the appeal. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *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*). Where counsel has deprived a defendant of an appeal, prejudice is presumed. *Toston v. State*, 127 Nev. 971, 976, 267 P.3d 795, 799 (2011).

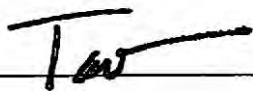
Newsome claimed counsel should have known he was dissatisfied because he did not receive the promised sentence of 12 to 35 years. Newsome did not claim that he asked counsel to file an appeal or that he expressed dissatisfaction with his conviction. He thus failed to allege specific facts that demonstrated counsel had a duty to file a direct appeal. *See id.* at 978, 267 P.3d at 800. Further, Newsome unconditionally waived his right to a direct appeal. We therefore conclude the district court did not err by denying this claim.

Finally, Newsome claims on appeal that counsel suffered from a conflict of interest because she represented both Newsome and his

codefendant. As this claim was not raised below, we need not consider it on appeal in the first instance. *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Nevertheless, we note Newsome and his codefendant executed a waiver of conflict for counsel to represent them both, and Newsome does not challenge the validity of that waiver. We therefore conclude he is not entitled to relief on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Valerie Adair, District Judge  
Richard Allan Newsome, Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk