

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PATRICK KEVIN MCKINNON,  
Appellant,  
vs.  
THE STATE OF NEVADA; AND LISA  
WALSH, WARDEN OF WARM  
SPRINGS CORRECTIONAL CENTER  
OF THE NEVADA DEPARTMENT OF  
CORRECTIONS,  
Respondents.

No. 79045-COA

**FILED**

**OCT 09 2020**

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

*ORDER OF AFFIRMANCE*

Patrick Kevin McKinnon appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on April 28, 2017, and a supplemental petition filed on November 13, 2017. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.


First, McKinnon claims the district court erred by denying his petition because NRS 201.020 violates Article 1, Section 14 of the Nevada Constitution and is therefore unconstitutional. We conclude the district court erred by reaching the merits of this claim because McKinnon's judgment of conviction was entered pursuant to a guilty plea, this claim does not allege "the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel," and consequently this claim was not properly raised in a postconviction habeas petition. NRS 34.810(1)(b). However, we also conclude the district court reached the right result by denying this claim. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason).

Second, McKinnon claims the district court erred by denying his petition because defense counsel was ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show (1) counsel's performance was deficient in that it fell below an objective standard of reasonableness and (2) a reasonable probability, but for counsel's errors, the petitioner would not have pleaded guilty and would have insisted on going to trial. *Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

The petitioner must demonstrate both components of the ineffective-assistance inquiry—deficiency and prejudice. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the district court's factual findings if they are supported by substantial evidence and are not clearly wrong, but we 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).

McKinnon claimed defense counsel was ineffective for failing to consider the constitutionality of NRS 201.020 before advising him about pleading guilty to a violation of that statute. The district court conducted an evidentiary hearing and made the following findings. Counsel had previously researched the issue of NRS 201.020's constitutionality. Counsel had determined that a motion challenging the statute's constitutionality would not be meritorious. And counsel was familiar with the issue and made a reasonable decision not to challenge the statute's constitutionality in the instant case. We conclude the district court's findings are supported by the record and are not clearly wrong, McKinnon failed to meet his burden to demonstrate that counsel was ineffective, and the district court did not err by rejecting this claim.

Having concluded McKinnon is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

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

cc: Hon. Nathan Tod Young, District Judge  
Paul G. Yohey  
Attorney General/Carson City  
Douglas County District Attorney/Minden  
Douglas County Clerk

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<sup>1</sup>The Honorable Michael Gibbons did not participate in the decision  
in this matter.