

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACK LEAL,  
Appellant,  
vs.  
JERRY HOWELL, WARDEN,  
SOUTHERN DESERT CORRECTIONAL  
CENTER,  
Respondent.

No. 79243-COA

FILED

OCT 09 2020

ELIZABETH J. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jack Leal 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.

Leal argues the district court erred by denying his claims of ineffective assistance of counsel raised in his March 21, 2019, petition. To demonstrate ineffective assistance of trial-level counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability 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 v. Washington*, 466 U.S. 668, 687-88 (1984). To warrant an evidentiary hearing, the 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, Leal claimed his counsel was ineffective because counsel also represented Leal's codefendant and, thus, had a conflict of interest. On direct appeal this court concluded Leal "waived any current or potential conflicts of interest by signing two different waivers regarding actual and potential conflicts of interest." *Leal v. State*, Docket No. 74050-COA (Order of Affirmance, September 11, 2018). Because he waived potential conflicts of interest stemming from counsel's representation of Leal's codefendant, Leal's claim was without merit. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.<sup>1</sup>

Second, Leal claimed his counsel was ineffective for failing to ensure his guilty plea was voluntarily entered. Leal contended his codefendant used threats and physical force to coerce him into entering a guilty plea and counsel was aware of those issues when Leal entered his guilty plea. In the written plea agreement, which Leal acknowledged having read and understood, Leal asserted that he entered his plea voluntarily and did not act under duress or coercion. At the plea canvass, Leal acknowledged that no one forced him to plead guilty and he was acting of his own free will. In light of the written plea agreement and the plea canvass, Leal failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. Leal also failed to demonstrate a reasonable probability he would have refused to plead guilty and would

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<sup>1</sup>To the extent Leal claims on appeal that the waiver itself was involuntary, he did not argue this point below and we decline to consider it on appeal in the first instance. *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

have insisted on proceeding to trial had counsel performed different actions regarding entry of the guilty plea. Therefore, the district court did not err by denying this claim without conducting an evidentiary hearing.<sup>2</sup>

Third, Leal appeared to claim his counsel was ineffective for failing to argue that the information did not provide him with proper notice of the allegations against him. Leal contended that, as a result of the defective information, he did not enter a knowing and voluntary guilty plea. The record demonstrates that Leal received proper notice of the allegations against him, because the information provided a plain and concise statement of the essential facts as well as a citation to the statutes discussing the crime of multiple transactions involving fraud or deceit in the course of an enterprise or occupation. *See* NRS 173.075(1); NRS 205.377(1). Leal did not demonstrate objectively reasonable counsel would have challenged the information on that basis. Leal also failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel argued that the information was deficient. Therefore, the district court did not err by denying this claim without conducting an evidentiary hearing.<sup>3</sup>

Finally, Leal claimed the information did not provide him with proper notice of the allegations against him. However, this claim was not


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<sup>2</sup>To the extent Leal also asserted he should be permitted to withdraw his guilty plea due to the alleged coercion, he failed to demonstrate withdrawal of his guilty plea was necessary to correct a manifest injustice. *See* NRS 176.165.

<sup>3</sup>To the extent Leal also asserted he should be permitted to withdraw his guilty plea due to the allegedly improper notice of the charges against him, he failed to demonstrate withdrawal of his guilty plea was necessary to correct a manifest injustice. *See* NRS 176.165.

based on an allegation that Leal's plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel, and therefore, this claim was not appropriately raised in Leal's petition. See NRS 34.810(1)(a). Therefore, the district court properly concluded Leal was not entitled to relief based upon this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Michael Villani, District Judge  
Jack Leal  
Attorney General/Carson City  
Attorney General/Ely  
Eighth District Court Clerk