


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CESAR ALEJANDRO CLEMENTE-  
PEREZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 80371-COA

FILED

NOV 09 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Cesar Alejandro Clemente-Perez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 17, 2019. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Clemente-Perez contends the district court erred by denying his claims that counsel was ineffective without first conducting an evidentiary hearing. 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*). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must show a reasonable probability that, 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, 988, 923 P.2d 1102, 1107 (1996).

Both components of the *Strickland* inquiry must be shown, 466 U.S. at 687, 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). To warrant an evidentiary hearing, 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, Clemente-Perez claimed counsel was ineffective for failing to explain the consequences of his plea to him. Specifically, he claimed counsel did not discuss the possible minimum and maximum sentences he was facing or the "40 percent rule." Clemente-Perez claimed this failure to discuss the potential sentences caused his plea to be unknowing and involuntary.


The district court found the plea agreement listed the minimum and maximum potential sentences and, by signing the plea agreement, Clemente-Perez acknowledged reading and discussing the plea agreement with counsel. The district court further found that, at the change of plea hearing, the court explained the minimum and maximum sentences, the maximum sentence Clemente-Perez could receive was 4 to 10 years for each count, and the district court could run the sentences consecutively. Finally, the district court found that Clemente-Perez acknowledged he understood the potential penalties and had discussed them with counsel. The record supports these findings of the district court. Therefore, we conclude Clemente-Perez failed to demonstrate counsel was deficient or resulting

prejudice, and the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Clemente-Perez claimed counsel was ineffective for failing to investigate prior to sentencing. Specifically, Clemente-Perez claimed counsel should have used an investigator to find witnesses to testify on his behalf at sentencing. Clemente-Perez did not specify who these witnesses were or what they would have testified to had they been called to testify at sentencing. Therefore, he failed to support this claim with sufficient factual allegations, *see Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming counsel did not conduct an adequate investigation must show how a better investigation would have made a more favorable outcome probable), and we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Having concluded Clemente-Perez is not entitled to relief, we ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Kimberly A. Wanker, District Judge  
David H. Neely, III  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk