

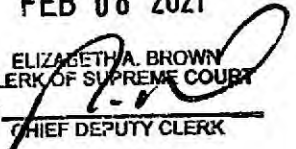
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER EARL SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79951-COA

FILED

FEB 08 2021

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

ORDER OF AFFIRMANCE

Christopher Earl Smith appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 20, 2018, and a supplement filed on July 30, 2019. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Smith contends the district court erred by denying his ineffective-assistance-of-counsel claims without first conducting an evidentiary hearing. To demonstrate ineffective assistance of defense 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We give deference to the 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,

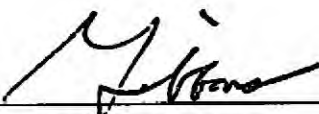
1166 (2005). To warrant an evidentiary hearing, petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

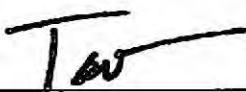
First, Smith claimed counsel was ineffective for failing to investigate prior to advising him to plead guilty. A petitioner claiming counsel did not conduct an adequate investigation must show how a better investigation would have made a more favorable outcome probable. See *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). The district court found that Smith failed to allege in his pleadings what a better investigation would have revealed or that he would not have pleaded guilty and would have insisted on going to trial. The record supports the findings of the district court. Smith's bare claim failed to demonstrate he was entitled to relief. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Smith claimed counsel was ineffective for failing to review what little evidence was provided by the State with sufficient time for Smith to make a knowing and intelligent entry of plea. Smith was facing habitual criminal adjudication because he had five prior felony convictions: battery with the use of a deadly weapon, robbery with the use of a deadly weapon, failure to stop on signal from police officer, possession of a stolen vehicle, and felon in possession of a firearm. By pleading guilty, he avoided habitual criminal adjudication and a potential sentence of life in prison without the possibility of parole, see NRS 207.010(1)(b)(1) (2009), and the parties stipulated to 12 to 30 months in prison. Given his criminal record, Smith failed to demonstrate a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Therefore, we

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

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Makris Legal Services, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk