

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARLENE FITZGERALD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81652-COA

FILED

MAY 20 2021

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

ORDER OF AFFIRMANCE

Marlene Fitzgerald appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 2, 2019, and a supplement filed on March 5, 2020. Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

First, Fitzgerald argues the district court erred by denying her claim of ineffective assistance of defense counsel without 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, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle her to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Fitzgerald argued counsel did not properly advise her of the immigration consequences of her plea and she would not have pleaded guilty had she known the immigration consequences. In both her guilty plea agreement and plea canvass, Fitzgerald acknowledged that this criminal conviction would likely result in serious negative immigration consequences. Fitzgerald's bare claim did not identify what else counsel should have advised her, and criminal defense attorneys are not required to provide complex immigration law advice. *See Padilla v. Kentucky*, 559 U.S. 356, 369 (2009). Therefore, Fitzgerald failed to demonstrate counsel's performance fell below an objective standard of reasonableness or that she would not have pleaded guilty had counsel performed differently. Accordingly, we conclude the district court did not err in denying this claim without conducting an evidentiary hearing.

Second, Fitzgerald argued counsel erroneously advised her to enter the guilty plea agreement to avoid further time in custody. Fitzgerald's bare claim did not identify why this advice was erroneous or what counsel should have advised otherwise. Therefore, Fitzgerald failed to demonstrate counsel's performance fell below an objective standard of reasonableness. Accordingly, we conclude the district court did not err in denying this claim without conducting an evidentiary hearing.

Fitzgerald also argues the district court erred in failing to allow her to withdraw her guilty plea because she was coerced into pleading guilty and that coercion was manifest injustice. After sentencing, a district court

may permit a petitioner to withdraw a guilty plea where necessary “[t]o correct manifest injustice.” NRS 176.165. “[U]ndue coercion occurs when a defendant is induced by promises or threats which deprive the plea of the nature of a voluntary act.” *Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015) (internal quotation marks omitted). We review a district court’s manifest injustice determination for abuse of discretion. *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1229 (2008).

Fitzgerald argued her plea was coerced because seven days was not enough time to consider the plea. Even if Fitzgerald was only given seven days to contemplate the plea, she did not demonstrate this was insufficient time to consider the plea and make a decision to plead guilty. Time constraints exist in every criminal case, and there is no indication in this case that a deadline rendered Fitzgerald’s plea involuntary. See *Stevenson*, 131 Nev. at 604-05, 354 P.3d at 1281. Therefore, we conclude the district court did not abuse its discretion in denying this claim without conducting an evidentiary hearing.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Cristina D. Silva, District Judge
Law Office of Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Attorney General/Ely
Eighth District Court Clerk