

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL ROBERT ESTES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82604-COA

FILED

JUL 12 2021

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

ORDER OF AFFIRMANCE

Michael Robert Estes appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Estes argues the district court erred by denying a claim of ineffective assistance of counsel raised in his September 10, 2019, petition. 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).

Estes appeared to argue his counsel was ineffective for advising him to enter a guilty plea even though Estes was not able to understand the plea agreement and the consequences thereof. The written plea agreement, which Estes acknowledged having read and understood, informed Estes of the potential prison terms he faced by acceptance of the plea offer. At the plea canvass, Estes asserted that he had reviewed the written plea agreement with his counsel, he understood the agreement, and he wished to enter a guilty plea. The trial-level court also explained the sentences Estes faced from entry of a guilty plea and Estes informed the court that he understood. The trial-level court also conducted an evidentiary hearing concerning Estes' presentence motion to withdraw guilty plea. Counsel testified that he reviewed the plea agreement with Estes and felt that Estes understood the agreement. At the evidentiary hearing, Estes also testified that he knew the State would have sought a life sentence if he had been convicted at trial and he accepted the plea agreement so that he could avoid a life sentence.

In light of the record, Estes did not demonstrate that counsel's performance fell below an objective standard of reasonableness. Estes also did not demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel discussed the plea agreement in a different manner, particularly in light of Estes' concern that he would have received a life sentence had he proceeded to trial. Therefore, we conclude the district court did not err by denying this claim.

Next, Estes claimed the sentencing court violated his constitutional rights by sentencing him pursuant to the habitual criminal enhancement. This claim was not based on an allegation that his guilty

plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel, and therefore, this claim was not permissible in a postconviction petition for a writ of habeas corpus stemming from a guilty plea. See NRS 34.810(1)(a). Accordingly, we conclude the district court properly denied relief for this claim.

Finally, Estes argues on appeal that his counsel was ineffective for failing to prepare a defense and failing to argue that Estes' was unable to properly enter a guilty plea due to his state of mind. In addition, Estes appears to argue on appeal that he is entitled to relief to the cumulative effect of the errors committed by his trial-level counsel. Estes also asserts that he should be permitted to withdraw his guilty plea because he was not competent when it was entered. Estes did not raise these claims in his petition, and we decline to consider them on appeal in the first instance. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
Michael Robert Estes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk