


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AUSTIN CADEAUX,
Appellant,
vs.
CALVIN JOHNSON,
Respondent.

No. 81894-COA

FILED

AUG 12 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Austin Cadeaux appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on July 17, 2020. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Cadeaux claims the district court erred by denying his claims challenging the validity of his guilty plea without first conducting an evidentiary hearing. After sentencing, a district court may permit a petitioner to withdraw his guilty plea where necessary “to correct a manifest injustice.” NRS 176.165. Manifest injustice may be shown by demonstrating ineffective assistance of counsel. *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008). A guilty plea is presumptively valid, and a petition carries the burden of establishing the plea was not entered knowingly and intelligently. *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). In determining the validity of a guilty plea, this court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000).

Cadeaux claimed he did not enter his guilty plea knowingly and voluntarily due to the ineffective assistance of counsel. 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 him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Cadeaux claimed that counsel was ineffective for failing to communicate with him regarding a proposed defense prior to advising him to plead guilty. Specifically, he stated counsel did not visit him or return phone calls. During the plea canvass, Cadeaux stated he read and understood the plea agreement. The guilty plea agreement states he discussed any possible defenses, defense strategies, and circumstances that would be in his favor. Further, he stated he discussed his case with counsel and he did not have any questions. Finally, Cadeaux's petition alleges he had conversations with counsel about his possible defenses. Thus, Cadeaux failed to demonstrate manifest injustice because he failed to demonstrate that counsel's performance fell below an objective standard of

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

Second, Cadeaux claimed that counsel was ineffective for failing to investigate. Specifically, Cadeaux claimed counsel refused to view the video. Had counsel viewed the video, Cadeaux claimed counsel would have seen that he never purposely tried to endanger or harm people and only made minimal accidental contact in an attempt to flee from the officers. Cadeaux did not claim that he did not know what was on the video prior to his pleading guilty. Given that Cadeaux knew what the video showed, he failed to demonstrate manifest injustice because he failed to demonstrate he would not have pleaded guilty and would have insisted on going to trial had counsel viewed the video. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.


Third, Cadeaux claimed that counsel was ineffective for advising him to plead guilty to a crime he did not commit. He told counsel he did not direct force with the intent to harm an officer but instead was under the influence of alcohol and trying to flee the scene. The facts of the crime are that Cadeaux backed into an officer's car after the officer put the lights on, took off at a high rate of speed, and hit another officer's car. He then continued to flee and hit two other people's cars before fleeing on foot. Given these facts, Cadeaux failed to demonstrate manifest injustice because he failed to demonstrate that counsel's advice was unreasonable or that he was innocent of the crime. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Finally, Cadeaux claims for the first time on appeal that counsel was ineffective for failing to explain the intent element for assault.

This claim was not raised in his petition filed below, and we decline to consider it on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David M. Jones, District Judge
Austin Cadeaux
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk