IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHI ORLANDO BRIONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82695-COA

FILED
SEP 13 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Richi Orlando Briones appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 31, 2020. Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

Briones first contends the district court erred by denying his claims of ineffective assistance of trial-level counsel without conducting an evidentiary hearing. To demonstrate ineffective assistance of 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, Briones claimed counsel was ineffective because counsel coerced him into pleading guilty by advising Briones that he likely faced the death penalty if he went to trial. "[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). The defendant's fear of the death penalty does not "invalidate his guilty plea if he voluntarily, knowingly, and understandingly consented to the imposition of a prison sentence." *Conger v. Warden*, 89 Nev. 263, 265, 510 P.2d 1359, 1361 (1973).

In the written plea agreement, which Briones acknowledged having read and understood, Briones asserted that he entered his plea voluntarily and did not act under duress or coercion. At the plea canvass, Briones acknowledged that no one forced him to plead guilty and he was acting of his own free will. In light of the written plea agreement and plea canvass, Briones failed to demonstrate counsel's performance fell below an objective standard of reasonableness. Briones also failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel given different advice regarding entry of the guilty plea. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Briones claimed counsel was ineffective because counsel had a conflict of interest. A conflict of interest exists if "counsel

actively represented conflicting interests" and the "conflict of interest adversely affected [the defendant's] lawyer's performance." *Strickland*, 466 U.S. at 692. "In general, a conflict exists when an attorney is placed in a situation conducive to divided loyalties." *Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) (citation and internal quotation marks omitted). Briones alleged counsel had a conflict of interest because counsel did not believe Briones while counsel advised him about the merits of his case. Briones did not allege counsel was actively representing conflicting interests or that any such conflict adversely affected counsel's performance. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Briones also claims the district court erred by denying his motion to appoint counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Because the district court granted Briones leave to proceed in forma pauperis and his petition was a first petition not subject to summary dismissal, *see* NRS 34.745(1), (4), Briones met the threshold requirements for the appointment of counsel. *See* NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 761. However, the district court found that the issues in this matter were not difficult, there was no indication that Briones was unable to comprehend the proceedings, and discovery with the aid of counsel was not necessary. For these reasons, the district court denied the motion to appoint counsel. The record supports the decision of the district

court, and we conclude the district court did not abuse its discretion by denying the motion for the appointment of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Cristina D. Silva, District Judge
Richi Orlando Briones
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

---

[1]For the first time on appeal, Briones claims that counsel failed to investigate how a large brain cyst would have affected Briones' behavior and also that counsel should have allowed Briones to plead not guilty by reason of insanity. We decline to consider these arguments as they were not raised in the district court in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).