

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PRENTICE MARSHALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82183-COA

FILED

SEP 17 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Prentice Marshall appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 24, 2018, and a supplemental petition filed on April 27, 2020. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Marshall argues the district court erred by denying his claim 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,

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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).

Marshall claimed counsel was ineffective for failing to challenge the admissibility of confessions Marshall made both before and after he was advised of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). While acknowledging counsel moved to suppress Marshall's unMirandized confession, Marshall claimed that, had counsel argued for suppression pursuant to *Missouri v. Seibert*, 542 U.S. 600 (2004), both the unMirandized and subsequent Mirandized confessions would have been suppressed and he would have proceeded to trial instead of pleading guilty.


In *Seibert*, a plurality of the United States Supreme Court addressed a then-frequently occurring situation where officers would first elicit a confession in deliberate violation of *Miranda*, thereafter advise the suspect of his *Miranda* rights, and then continue the interrogation to obtain a Mirandized confession, which typically reiterated the unMirandized confession. See *Seibert*, 542 U.S. at 604. The Court presumed the unMirandized statement was inadmissible and concluded that the subsequent confession, which was "a police strategy adapted to undermine the *Miranda* warnings," *id.* at 616, was, therefore, also inadmissible. *Id.* at 604, 617.

Here, this court has already concluded that Marshall's unMirandized confession would have been admissible at trial. *Marshall v. State*, Docket No. 68747-COA (Order of Affirmance, March 29, 2017). This holding represents the law of the case, *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975), and Marshall did not claim an exception to this

doctrine, see *Tien Fu Hsu v. Cty. of Clark*, 123 Nev. 625, 630-31, 173 P.3d 724, 728-29 (2007). Because Marshall's unMirandized confession would have been admissible at his trial, Marshall failed to demonstrate that *Seibert* applied to his case. In turn, he failed to demonstrate counsel was deficient or a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial had counsel sought suppression of his confessions pursuant to *Seibert*. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Oronoz & Ericsson, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk