

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ULISES BENITES-PAREDES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82149-COA

FILED

OCT 21 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ulises Benites-Paredes appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 1, 2019. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Benites-Paredes argues the district court erred by denying his claims that his plea was not knowingly and voluntarily entered, because he received ineffective assistance of counsel. He further argues the district court erred by failing to conduct 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 petitioner 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).

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, Benites-Paredes claimed counsel was ineffective for failing to communicate with him and for failing to conduct an adequate investigation and, therefore, his plea was invalid. The district court found Benites-Paredes failed to support these claims with specific factual allegations. The record supports the findings of the district court: He failed to allege how further communication would have made a difference in his choice to plead guilty or what further investigation would have revealed.

See Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Therefore, we conclude the district court did not err by denying these claims without first conducting an evidentiary hearing.

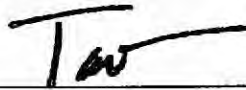
Second, Benites-Paredes claimed counsel was ineffective for failing to explain to him that he could receive consecutive sentences and, therefore, his plea was invalid. At the change of plea hearing, counsel stated he had explained the possibility of consecutive sentences. Further, the guilty plea agreement stated he could get consecutive sentences, and Benites-Paredes admitted counsel explained the plea agreement to him, he understood the guilty plea agreement, and the guilty plea agreement was provided to him in Spanish. Moreover, the district court explained the possibility of consecutive sentences to Benites-Paredes several times throughout the change of plea hearing, and he stated he understood he could receive up to 20 years to life in prison. Therefore, Benites-Paredes failed to demonstrate counsel was deficient or a reasonable probability he would not have pleaded guilty and would have insisted on going to trial had the possibility of consecutive sentences been further explained to him. Thus, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Finally, Benites-Paredes argues he is entitled to relief based on the cumulative errors of counsel. Even assuming multiple deficiencies in counsel's performance may be cumulated to find prejudice under the *Strickland* test, *see McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318 n.17 (2018), there was nothing to cumulate because Benites-

Paredes did not demonstrate any deficiencies, *see Morgan v. State*, 134 Nev. 200, 201 n.1, 416 P.3d 212, 217 n.1 (2018). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Waldo Law, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk