

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHELTON ALPHONSE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82725-COA

FILED

NOV 05 2021

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

ORDER OF AFFIRMANCE

Shelton Alphonse appeals from an order of the district court denying postconviction petitions for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Alphonse argues the district court erred by denying his July 17, 2020, and August 17, 2020, petitions and later-filed supplement without first conducting an evidentiary hearing. In his petitions, Alphonse claimed that his trial-level counsel was ineffective. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must show a reasonable probability that, but for counsel's errors, 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, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry—deficiency and prejudice—must be shown. *Strickland*, 466 U.S. at 687.

We give deference to the district 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, Alphonse argued that his counsel was ineffective for failing to inform Alphonse that he could request an interpreter. Alphonse asserted that English is not his first language and, thus, he should have been provided an interpreter to help him understand the plea agreement. Alphonse also contended that his counsel should have sought withdrawal of his plea based upon the failure to receive an interpreter.

At the plea canvass, the trial-level court asked Alphonse if he was able to read, write, and understand the English language. Alphonse responded that he had those abilities. Alphonse also acknowledged that he personally read the written plea agreement and understood everything contained within that agreement. In light of Alphonse's acknowledgments that he is able to read and understand the English language, and his assertion that he read and understood the written plea agreement, Alphonse failed to demonstrate his counsel's performance fell below an objective standard of reasonableness by failing to discuss pursuit of an interpreter with Alphonse or to attempt to withdraw Alphonse's plea based upon a lack of an interpreter. Moreover, as Alphonse asserted he understood the English language, Alphonse also failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel informed him that he could request an interpreter. In addition, Alphonse failed to demonstrate a reasonable probability of a different outcome had counsel moved to

withdraw Alphonse's plea based upon a lack of an interpreter. Therefore, the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Alphonse appeared to argue his counsel was ineffective for failing to assert in the presentence motion to withdraw guilty plea that the plea canvass was flawed because Alphonse did not appropriately respond to questions concerning the facts of the offenses. Alphonse contended his responses indicate that he did not actually make a knowing guilty plea.

"It is preferable for the district court to elicit from the defendant either a statement indicating that he or she understands the elements of the charged offense or an admission that he or she committed the offense." *State v. Gomes*, 112 Nev. 1473, 1480-81, 930 P.2d 701, 706 (1996). "However, this court should review the entire record and look to the totality of the circumstances of the case, not just the technical sufficiency of the plea canvass, to determine whether a defendant entered a plea with actual understanding of the nature of the charges." *Id.* at 1481, 930 P.2d at 706.

At the plea canvass, the trial-level court asked Alphonse what events occurred that caused him to receive criminal charges. Alphonse responded that he engaged in an argument with the victim and she asserted that he kicked her. Alphonse also stated that he took her cell phone. In addition, Alphonse asserted that he read the charges contained within the amended information and understood the charges against him. Moreover, the written plea agreement, which Alphonse acknowledged having read and understood, informed Alphonse of the charges and consequences he faced due to entry of a guilty plea. In light of the plea canvass and written plea agreement, the totality of the circumstances demonstrate that Alphonse understood the nature of the charges against him and knowingly entered a guilty plea. Accordingly, Alphonse did not demonstrate his counsel's

performance fell below an objective standard of reasonableness by failing to assert that the plea canvass was flawed or a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Alphonse argued his counsel was ineffective for failing to answer his questions about pursuing a direct appeal. “[T]rial counsel does not have a constitutional duty to always inform his client of, or consult with his client about, the right to a direct appeal when the client has been convicted pursuant to a guilty plea.” *Toston v. State*, 127 Nev. 971, 977, 267 P.3d 795, 799 (2011). The duty to inform or consult with a client with respect to appealing a judgment of conviction based on a guilty plea only arises “when the defendant inquires about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the right to a direct appeal.” *Id.*

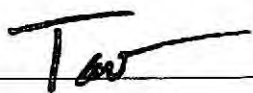
Alphonse contended that, after he was convicted, he wished to talk with counsel concerning a direct appeal but was unable to reach counsel to do so. Alphonse’s allegations were insufficient to demonstrate that he actually inquired about his right to a direct appeal, and he did not allege there were circumstances where he would have benefited from receiving advice about the right to a direct appeal. Further, Alphonse specifically waived his right to appeal in his guilty plea agreement. Therefore, we conclude the district court did not err in denying this claim without conducting an evidentiary hearing.


Finally, Alphonse argued his plea was not entered knowingly and voluntarily because he did not understand the English language and the plea canvass demonstrated he did not understand the plea agreement. Alphonse asserted he would suffer manifest injustice if he were not permitted to withdraw his guilty plea. “This court will not invalidate a plea

as long as the totality of the circumstances, as shown by the record, demonstrates that the plea was knowingly and voluntarily made and that the defendant understood the nature of the offense and the consequences of the plea.” *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). As explained previously, Alphonse asserted at the plea canvass that he understood the English language. Moreover, Alphonse acknowledged in the written plea agreement and at the plea canvass that he understood the charges against him and the consequences he faced from entry of a guilty plea and that he entered his plea voluntarily. The totality of the circumstances demonstrate that Alphonse knowingly and voluntarily entered his guilty plea. Alphonse accordingly did not demonstrate withdrawal of his guilty plea was necessary to correct a manifest injustice. See NRS 176.165. 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. Ronald J. Israel, District Judge
Lowe Law LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk