

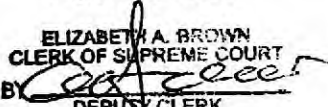
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDWARD EVERETT BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83242-COA

FILED

FEB 09 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Edward Everett Brown appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Brown argues the district court erred by denying his March 30, 2021, petition. In his petition, Brown claimed that his counsel was ineffective. 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).

First, Brown claimed that his counsel was ineffective for failing to obtain a surveillance video recording from a casino despite Brown's request for counsel to do so. Brown asserted that the recording would have depicted him at a casino on the day of the crime. Brown did not specify when he was in the casino as it related to the timeframe in which the victim was killed. In addition, Brown did not explain how counsel's failure to obtain the surveillance video bore on his decision to enter a guilty plea. Thus, Brown did not support this claim with specific factual allegations. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Moreover, in the written plea agreement and at the plea canvass, Brown acknowledged that he discussed possible defenses with his counsel and came to the conclusion that entry of a guilty plea was in his best interests. Accordingly, Brown did not demonstrate that counsel's performance fell below an objective standard of reasonableness or a reasonable probability that he would have refused to plead guilty and would have insisted on proceeding to trial had counsel obtained the surveillance video. Therefore, we conclude the district court did not err by denying this claim.

Second, Brown appeared to claim that his counsel was ineffective for failing to move to suppress evidence that the defense obtained during discovery. Brown did not identify what evidence he believed should have been suppressed and did not explain why he was prejudiced by counsel's failure to seek suppression of any of the evidence in this matter. Thus, Brown did not support this claim with specific factual allegations. *See id.* Accordingly, Brown did not demonstrate that counsel's performance fell below an objective standard of reasonableness or a reasonable probability that he would have refused to plead guilty and would have

insisted on proceeding to trial had counsel moved to suppress evidence. Therefore, we conclude the district court did not err by denying this claim.


Third, Brown claimed that his counsel was ineffective for failing to request a bail hearing. Brown did not explain why a failure by counsel to seek a bail hearing had any bearing upon Brown's decision to enter a guilty plea. Thus, Brown did not support this claim with specific factual allegations. *See id.* Accordingly, Brown did not demonstrate a reasonable probability that he would have refused to plead guilty and would have insisted on proceeding to trial but for any errors committed by counsel concerning a bail hearing. Therefore, we conclude the district court did not err by denying this claim.

Finally, Brown argues on appeal the district court violated his First Amendment rights by conducting a hearing concerning his postconviction petition outside of his presence. "The First Amendment guarantees a prisoner . . . a right of meaningful access to the courts." *Jones v. Williams*, 791 F.3d 1023, 1035 (9th Cir. 2015). However, the right of access to the courts is not without limitation. *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 56, 110 P.3d 30, 40 (2005), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008). In order to state a claim for denial of access to the courts, one must be able to demonstrate some actual injury from the denial of access to the courts. *Lewis v. Casey*, 518 U.S. 343, 349 (1996).

The record indicates the hearing at issue was not an evidentiary hearing, no testimony was presented, and the district court merely directed the State to prepare an order denying the petition. Brown did not explain how his presence at the hearing would have affected the outcome of the

hearing or the district court's decision to deny his petition. Therefore, Brown does not demonstrate he suffered an actual injury by his absence from the relevant hearing. Accordingly, we conclude that Brown is not entitled to relief based upon this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Edward Everett Brown
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk