

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDREW SINGLETON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83138-COA

**FILED**

**MAR 04 2022**

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

*ORDER OF AFFIRMANCE*

Andrew Singleton appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 29, 2020. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Singleton claimed he received ineffective assistance from defense counsel. 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). 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, Singleton claimed counsel was ineffective because Singleton was coerced into entering a plea of “guilty” but mentally ill pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). Singleton claimed he was under duress because the District Attorney’s Office threatened to seek a sentence of life without the possibility of parole if he did not plead guilty. Singleton’s bare claim did not specify how he was coerced by any action of counsel. Moreover, “[a] guilty plea is not coerced merely because motivated by a desire to avoid the possibility of a higher penalty.” *Whitman v. Warden*, 90 Nev. 434, 436, 529 P.2d 792, 793 (1974). Singleton thus failed to demonstrate counsel’s actions were objectively unreasonable or a reasonable probability he would have refused to plead guilty but for counsel’s actions. Therefore, we conclude the district court did not err by denying this claim.

Second, Singleton claimed counsel was ineffective for allowing him to enter a plea agreement that resulted in the district court imposing an illegal sentence. Singleton claimed the deadly-weapon-enhancement sentence imposed by the district court is illegal because NRS 193.165 is unconstitutionally vague. The Nevada Supreme Court has previously determined that NRS 193.165 is not unconstitutionally vague. See *Woofter v. O’Donnell*, 91 Nev. 756, 762, 542 P.2d 1396, 1400 (1975). Moreover, the sentencing court imposed the stipulated sentence that Singleton bargained for in his plea agreement. Singleton thus failed to demonstrate counsel’s

actions were objectively unreasonable or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel performed different actions concerning entry of Singleton's plea. Therefore, we conclude the district court did not err by denying this claim.<sup>1</sup>

Third, Singleton claimed counsel was ineffective for failing to provide him with discovery or go over the evidence with him. During the plea canvass, Singleton informed the district court that he had not received and gone over all of the discovery and evidence in the case. Counsel informed the district court that she went over the police reports and witness statements with Singleton but not the photographs. Singleton did not allege that he would not have entered his plea absent counsel's alleged error. Rather, despite knowing he had not reviewed all the evidence or discovery, Singleton chose to proceed with his plea. Singleton thus failed to demonstrate counsel's actions regarding discovery or evidence were objectively unreasonable or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel performed different actions concerning the discovery or evidence. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Singleton claimed counsel was ineffective for failing to discuss any potential defenses with him. Singleton acknowledged in both

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<sup>1</sup>Singleton raised the underlying substantive claim as a stand-alone claim. However, because the claim could have been raised on direct appeal, it was waived. See *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999).

the written plea agreement and during his plea canvass that he had discussed potential defenses with counsel. Singleton thus failed to demonstrate counsel's actions regarding discussion of potential defenses were objectively unreasonable or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel performed different actions concerning potential defenses. Therefore, we conclude the district court did not err by denying this claim.

Singleton also appeared to claim that his plea was not entered knowingly because he did not understand the plea agreement. Singleton alleged he suffers from mental illness and was under the influence of psychotropic medication that impaired his ability to understand his decision to plead guilty. Singleton's bare claim did not specify what he did not understand. Moreover, Singleton acknowledged in the written plea agreement that he entered into the plea agreement voluntarily and that he was not under the influence of any controlled substance or other drug that would impair his ability to understand the plea agreement or the proceedings surrounding the entry of his plea. At the plea canvass, Singleton acknowledged that he had discussed his mental illness with his attorney, he read the plea agreement, and he understood everything contained in it. Finally, counsel acknowledged that she was aware Singleton was on medication but did not believe the medication prevented Singleton from understanding the plea and the proceedings. Singleton thus failed to demonstrate his plea was invalid. Therefore, we conclude the district court did not err by denying this claim.

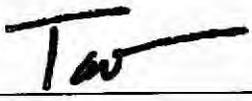
Singleton claims on appeal that the district court erred by failing to provide a reason as to why the State did not respond to his

petition. The record contains the response from the State. We therefore conclude Singleton is not entitled to relief on this claim.

Finally, Singleton claims the district court erred by failing to address his petition on the merits. The record demonstrates that the district court ruled on the merits of Singleton's claims. We therefore conclude Singleton is not entitled to relief on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Michael Villani, District Judge  
Andrew Singleton  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk