

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KHALID CHARLOT, A/K/A KAHLID
CHARLOT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83504-COA

FILED

JUN 13 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Khalid Charlot appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 26, 2019, and a supplement filed on July 5, 2020. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Charlot claims the district court erred by denying his claims of ineffective assistance of counsel without conducting an evidentiary hearing. 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, Charlot claimed that his counsel was ineffective for failing to advise him of the sentencing consequences of his plea and misinforming him that he would receive a lenient sentence. Charlot acknowledged in his guilty plea agreement and during his plea colloquy that he understood the possible range of sentences he faced, that he had not been promised a particular sentence, and that the sentencing decision was strictly up to the court. Accordingly, Charlot failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to enter a guilty plea and would have insisted on proceeding to trial had counsel explained the potential sentencing consequences in a different manner. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.¹

¹To the extent Charlot claimed that his counsel was ineffective for failing to advise him on other aspects or consequences of his guilty plea, Charlot's bare claim failed to identify what those were, and we therefore conclude he was not entitled to relief.

Second, Charlot claimed that his counsel was ineffective for failing to provide him with the discovery and for “barely” meeting with him. Charlot did not explain how counsel’s alleged inactions affected his decision to enter a guilty plea. Accordingly, Charlot failed to demonstrate he would have refused to enter a guilty plea and would have insisted on proceeding to trial but for counsel’s inactions. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Charlot claimed that his counsel was ineffective for failing to sever his case from his codefendants’. Charlot failed to allege specific facts that demonstrated a motion to sever would have been successful. *See* NRS 174.165(1) (providing when a defendant is entitled to a severed trial); *Rowland v. State*, 118 Nev. 31, 44, 39 P.3d 114, 122 (2002) (describing when a court should sever the trial of jointly indicted defendants). Accordingly, Charlot failed to demonstrate his counsel’s performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to enter a guilty plea and would have insisted on proceeding to trial but for counsel’s inaction. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fourth, Charlot claimed that his counsel was ineffective for failing to discuss case strategy and possible defenses with him. To the extent Charlot averred his “minimal involvement as to face to face contact with the victims” constituted a defense, the State charged Charlot in the alternative under direct, aiding-and-abetting, and conspiracy theories of criminal liability. Charlot’s lack of face-to-face involvement with the victims would not have been a defense. *See* NRS 195.020 (proscribing aiding

and abetting theory of criminal liability); *Bolden v. State*, 121 Nev. 908, 915, 124 P.3d 191, 196 (2005) (recognizing coconspirator liability as a theory of criminal liability), *receded from on other grounds by Cortinas v. State*, 124 Nev. 1013, 1026-27, 195 P.3d 315, 324 (2008). And Charlot did not otherwise specify what defenses or strategies counsel failed to discuss. Accordingly, Charlot failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to enter a guilty plea and would have insisted on proceeding to trial but for counsel's alleged inaction. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.²

Fifth, Charlot claimed counsel was ineffective for using undue influence to pressure him into taking a plea deal on the first day of trial. Charlot's bare claim failed to allege specific facts demonstrating undue influence. Moreover, the guilty plea agreement states that Charlot was not acting under duress or coercion, and during the plea canvass, Charlot stated that no one had forced or threatened him to plead guilty. Accordingly, Charlot failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would

²To the extent Charlot claimed that his counsel was ineffective for failing to appropriately communicate regarding other aspects of Charlot's case, his bare claim failed to identify the other aspects, and we therefore conclude he was not entitled to relief. To the extent Charlot argues on appeal that it was error for the trial-level court to not explicitly canvass Charlot on whether he discussed defenses and strategies with counsel, this argument was not raised below, and we decline to consider it on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

have refused to enter a guilty plea and would have insisted on proceeding to trial but for counsel's actions. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Sixth, Charlot claimed counsel was ineffective for failing to make competent comments on his behalf during sentencing. Charlot argued that counsel failed to "pin down who the person who punched one victim was and who had the gun." Charlot also argued that counsel failed to object to, or request clarification of, misleading and nonfactual arguments made by the prosecutor at sentencing about the respective roles of the defendants during the crimes.


At sentencing, counsel emphasized Charlot's age, his educational history, and his reduced role in the crimes compared to his codefendants and argued for a prison sentence significantly shorter than the sentence recommended by the State. Counsel argued that Charlot did not shoot or hit anybody during the crimes and only got out of the car at one of the robbery locations. And Charlot failed to allege specific facts explaining what objections or requests for clarification counsel should have made.³ Accordingly, Charlot failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome at sentencing had counsel made additional comments on his behalf. Therefore, we conclude the

³In his opening brief on appeal, Charlot identifies the State's arguments with which he takes issue and specifies what he claims counsel should have done differently. These arguments were not raised below, and we decline to consider them on appeal in the first instance. See *McNelton*, 115 Nev. at 415-16, 990 P.2d at 1275-76.

district court did not err by denying this claim without conducting an evidentiary hearing.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Lowe Law LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk