


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DESHAUN JAMES LEWIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83944-COA

FILED

AUG 26 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Deshaun James Lewis appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 4, 2021. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Lewis argues the district court erred by denying his petition without first conducting an evidentiary hearing. 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, Lewis claimed that he received ineffective assistance from his 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).

Lewis claimed counsel was ineffective for telling him that he had an 85% chance of receiving probation. Counsel's candid advice about the likely outcome of sentencing was not evidence of deficient performance. *See Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 69, 412 P.3d 56, 62 (2018) (noting that one of the roles of an attorney is to provide candid advice to his or her client). Further, given the fact that Lewis admitted to hurting the child, Lewis failed to demonstrate a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial had counsel not stated his belief that Lewis would probably receive probation. Therefore, we conclude Lewis was not entitled to relief on this claim.


Second, Lewis claimed that his plea was invalid because he did not understand the range of punishments he was facing and because counsel overbore his will. After sentencing, a district court may permit a petitioner to withdraw his guilty plea where necessary "to correct manifest injustice." NRS 176.165. 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).

Lewis 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. Therefore, Lewis failed to demonstrate he did not understand the consequences of his plea. Further, Lewis's subjective belief based on counsel's opinion of the likely sentence did not demonstrate the plea was invalid or that he did not understand the consequences of his plea. See *Rouse v. State*, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975) (“[M]ere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing.”). Lewis also failed to allege facts that demonstrated counsel overbore his will. Having considered the totality of the circumstances, we conclude Lewis did not overcome the presumption that his guilty plea was valid. Therefore, we conclude Lewis was not entitled to relief on this claim.

For the foregoing reasons, we conclude the district court did not err by denying Lewis's claims without first conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Monica Trujillo, District Judge  
Special Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk