

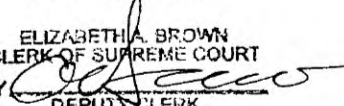
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEANDRE MARTELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84482-COA

FILED

SEP 09 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Leandre Martell appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Martell argues that the district court erred by denying his December 17, 2021, petition. In his petition, Martell claimed that his trial-level counsel was ineffective. To demonstrate ineffective assistance of 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).

Martell claimed that his trial-level counsel was ineffective for causing him to accept a plea offer under false pretenses. Martell contended that the State assured him he would only serve an additional five or six months in custody after entry of his guilty plea and his counsel did not investigate whether that statement was made in good faith.

In the written plea agreement, the parties stipulated to a sentence of 12 to 30 months in exchange for Martell's guilty plea to attempted coercion in this matter. Martell also agreed to plead guilty to battery constituting domestic violence by strangulation in a different criminal matter, and the parties agreed that the State would have no objection to concurrent terms for the prison sentences stemming from the two convictions. The State also agreed not to file charges in two additional criminal matters.

The written plea agreement also informed Martell that he faced a prison sentence in this matter of between one and five years. In addition, Martell acknowledged in the written plea agreement that he had not been promised nor guaranteed any particular sentence by anyone and he understood that his ultimate sentence was to be determined by the sentencing court. Moreover, at the plea canvass, Martell acknowledged that he understood the potential range of sentences he faced and that no one had made any promises in order to induce him to enter a guilty plea other than the terms that were contained within the written plea agreement.

In light of the record concerning Martell's acknowledgements in the written plea agreement and during the plea canvass, Martell failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. Martell also failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding

to trial had counsel done a more thorough job of explaining the plea agreement to him or discussed in a different manner the potential penalties he faced. Therefore, we conclude the district court did not err by denying this claim.

Next, Martell claimed that his plea was invalid because the State misinformed him about the minimum term he would serve if he accepted its plea offer. “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, the written plea agreement explained to Martell the potential minimum term he faced by entry of his guilty plea, and Martell acknowledged that he read and understood the written plea agreement. Martell also acknowledged at the plea canvass that he understood the potential range of sentences he faced and that there were no promises, other than those contained within the written plea agreement, that caused him to accept the State’s plea offer.

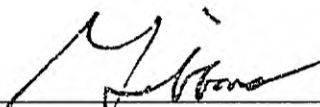
Thus, the totality of the circumstances demonstrated that Martell’s plea was knowingly and voluntarily made and that he understood the consequences he faced from entry of his plea. Therefore, we conclude that Martell is not entitled to relief based upon this claim.

Next, Martell argues the district court erred by denying his petition without considering his memorandum he filed in support of his petition because it was not filed in a timely manner by the clerk’s office. The district court has the discretion to allow a petitioner to file documents to supplement the initial petition, but the district court did not grant

Martell permission to file supplemental documents. *See* NRS 34.750(5); *State v. Powell*, 122 Nev. 751, 758, 138 P.3d 453, 458 (2006). Because Martell did not have permission to file additional documents, he fails to demonstrate any prejudice stemming from a delay in filing his memorandum. Therefore, Martell is not entitled to relief based upon this claim.

Finally, Martell argues on appeal that the State breached the plea agreement and that he is entitled to relief due to cumulative error. However, Martell did not raise these claims in his petition, and we decline to consider them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Erika D. Ballou, District Judge
Leandre Martell
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk