

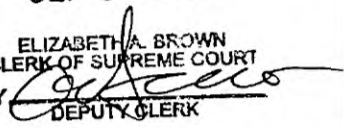
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHAN JONATHON KITTREDGE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83943-COA

FILED

SEP 09 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Shan Jonathon Kittredge appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 22, 2020,¹ and a supplemental petition filed on July 14, 2021. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

Kittredge first argues the district court erred by denying his claims of ineffective assistance of defense counsel without conducting an evidentiary hearing. 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

¹The district court correctly determined Kittredge's petition was timely, because it was received by the clerk of the district court on April 19, 2020, which was within the one-year timely filing deadline. See NRS 34.726(1); *Sullivan v. Eighth Judicial Dist. Court*, 111 Nev. 1367, 1372, 904 P.2d 1039, 1042 (1995) (providing it is the duty of the clerk of the district court to file documents).

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). 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).

Kittredge claimed that his defense counsel was ineffective for failing to request a competency hearing and advising him to enter a plea agreement despite the fact that Kittredge was suffering from the effects of having been shot in the head while the police were trying to detain him in the underlying case. Kittredge alleged he was confused and unable to clearly or intelligently understand the plea agreement. Kittredge failed to identify facts that demonstrated he lacked "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding [or] a rational as well as factual understanding of the proceedings against him." See *Melchor-Gloria v. State*, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983) (quoting *Dusky v. United States*, 362 U.S. 402 (1960)) (setting forth the test for competency). Kittredge also failed to identify which aspects of the plea agreement he was confused about or did not understand. Moreover,

during his plea canvass, Kittredge told the court that he felt he understood what was “happening here today” and described the events in his own words. Accordingly, Kittredge failed to demonstrate counsel’s performance fell below an objective standard of reasonableness or a reasonable probability he would not have pleaded guilty and would have insisted on going to trial if not for counsel’s alleged errors. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Kittredge also claimed that his defense counsel was ineffective for failing to investigate his mental impairment or capacity prior to advising Kittredge to plead guilty. Kittredge alleged counsel failed to have him tested or evaluated to support a possible defense. Kittredge failed to allege what any such investigation, testing, or evaluation would have revealed or what defense could have been developed. Accordingly, Kittredge failed to demonstrate counsel was deficient or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial absent counsel’s alleged errors. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

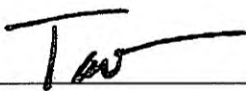
Finally, Kittredge argues for the first time on appeal that his defense counsel was ineffective for failing to investigate all of the relevant facts prior to the entry of Kittredge’s guilty plea, for failing to file motions, and for urging Kittredge to enter a guilty plea that stipulated to a cruel and unusual sentence; that the district court erred by determining that Kittredge was competent to enter a guilty plea; and that cumulative errors

warrant relief. Because these claims were not raised in Kittredge's petition below, 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).

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Christy L. Craig, District Judge
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk