

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELMER VALENTIN SANCHEZ-RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84870-COA

FILED

MAR 14 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Elmer Valentin Sanchez-Rodriguez appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on September 19, 2019. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Sanchez-Rodriguez argues the district court erred by denying his ineffective assistance of counsel claim without first conducting an evidentiary hearing. 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). 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,

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225 (1984). 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).

Sanchez-Rodriguez claimed that counsel were ineffective for "badgering" him to plead guilty and for failing to explain Sanchez-Rodriguez's constitutional rights.¹ The district court found that Sanchez-Rodriguez failed to allege specific facts that demonstrated counsel coerced him into pleading guilty or that he did not understand his constitutional rights. In support of this, the district court cited to the plea canvass where Sanchez-Rodriguez admitted that he read and understood the plea agreement, he understood the constitutional rights he was giving up, and counsel did not coerce him or threaten him to plead guilty. Further the district court found that Sanchez-Rodriguez did not allege that but for counsel's alleged errors, there was a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Therefore, the district court concluded Sanchez-Rodriguez failed to allege sufficient facts that demonstrated counsel were ineffective. The record supports the decision of the district court, and we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Sanchez-Rodriguez also claimed that counsel were ineffective for allegedly failing to communicate with him, failing to pursue a preliminary hearing, communicating with him prior to being appointed to his case, convincing him to plead guilty against his wishes and in violation of his constitutional rights, and stipulating to maximum consecutive

¹Sanchez-Rodriguez was represented by four different attorneys prior to his pleading guilty.

sentences. Yet, Sanchez-Rodriguez failed to assert that but for these alleged errors, there was a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. As a result, because both components of the ineffective assistance of counsel standard must be shown, Sanchez-Rodriguez failed to raise claims supported by specific factual allegations that were not belied by the record and, if true, would entitle him to relief. Thus, we conclude the district court did not err by denying these claims without first conducting an evidentiary hearing.

Next, Sanchez-Rodriguez argues that the district court erred by denying, without first conducting an evidentiary hearing, his claim that his plea was not knowingly, voluntarily, and intelligently entered because counsel were ineffective for the reasons alleged above. Because Sanchez-Rodriguez failed to demonstrate counsel were ineffective, he did not demonstrate his plea was not knowingly, voluntarily, and intelligently entered. *See* NRS 176.165; *see also* *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008) (“A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel.” (footnote and internal quotation marks omitted)). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. David A. Hardy, District Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk