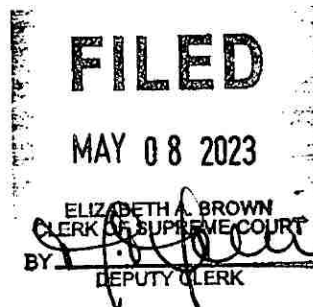


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER JOHN DIAZ-CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85180-COA



ORDER OF AFFIRMANCE

Christopher John Diaz-Castro appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus and a petition to establish factual innocence. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Postconviction petition for a writ of habeas corpus

Diaz-Castro argues that the district court erred by denying his September 14, 2020, petition without first conducting an evidentiary hearing. Diaz-Castro argues 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).

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). 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).

Diaz-Castro claims that his counsel was ineffective for failing to conduct a proper investigation into his case prior to advising Diaz-Castro to enter a guilty plea. Diaz-Castro contends that counsel should have investigated the victim's credibility and family background. A petitioner alleging that an attorney should have conducted a better investigation must demonstrate what the results of a better investigation would have been and how it would have affected the outcome of the proceedings. *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

Diaz-Castro's bare claim fails to specifically allege what the results of any such investigation would have been or how it would have affected the outcome of the proceedings. In addition, Diaz-Castro confessed to touching the young victim in a sexual manner. Diaz-Castro also received a substantial reduction in the number of charges through the plea-bargaining process as he agreed to plead guilty to only 3 counts instead of proceeding to trial on the originally charged 37 counts. For these reasons, Diaz-Castro fails to demonstrate a reasonable probability that he would have refused to plead guilty and would have insisted on proceeding to trial had counsel undertaken an investigation into the victim's credibility and her family background. Therefore, we conclude that the district court did not err by denying the petition without conducting an evidentiary hearing.

Petition to establish factual innocence

Diaz-Castro next argues that the district court erred by denying his June 30, 2021, petition to establish factual innocence without first conducting an evidentiary hearing. Diaz-Castro bases his factual innocence claim upon an assertion that the victim in this matter recanted.

A person who has been convicted of a felony may petition the district court for a hearing to establish that person's factual innocence. NRS 34.960(1). The petition must contain supporting affidavits or other credible documents indicating that newly discovered evidence exists which, if credible, establishes a bona fide issue of factual innocence. NRS 34.960(2)(a). The petition must also assert that the newly discovered evidence "is not reliant solely upon recantation of testimony by a witness against the petitioner and is not merely impeachment evidence." NRS 34.960(2)(b)(2).

In addition, the petition must assert that the newly discovered evidence demonstrates the petitioner's factual innocence "[w]hen viewed with all other evidence in the case, regardless of whether such evidence was admitted during trial." NRS 34.960(2)(d). A district court should conduct an evidentiary hearing regarding a petition to establish factual innocence if the newly discovered evidence presented by the petitioner, if credible, would clearly establish the petitioner's factual innocence. *Bennett v. State*, 138 Nev., Adv. Op. 29, 508 P.3d 410, 413 (2022).

Diaz-Castro claims that the victim recanted her allegations against him. Diaz-Castro did not file with his petition supporting affidavits or other credible documents indicating that the alleged newly discovered evidence exists. In addition, Diaz-Castro fails to allege that the newly discovered evidence was not reliant solely upon recantation testimony. *See*

id. at 414. (“The word ‘solely’ means that a recantation cannot be the only newly discovered evidence identified by the petitioner.”). Moreover, Diaz-Castro fails to show that the newly discovered evidence demonstrated his factual innocence when viewed with all other evidence in the case, including his confession. Diaz-Castro’s claim is thus insufficient to clearly establish his factual innocence. Therefore, we conclude the district court did not err by denying the petition without conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Ronald J. Israel, District Judge
Jeannie N. Hua
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk