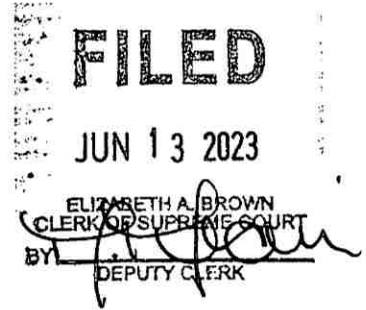


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WOODROW JUNE MARSHALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85617-COA



ORDER OF AFFIRMANCE

Woodrow June Marshall appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 2, 2022. Eighth Judicial District Court, Clark County; Bitu Yeager, Judge.

Marshall argues the district court erred by denying his claims of ineffective assistance of counsel without conducting an evidentiary hearing. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must show a reasonable probability that, but for counsel's errors, 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, 988, 923 P.2d 1102, 1107 (1996).

Both components of the inquiry—deficiency and prejudice—must be shown. *Strickland*, 466 U.S. at 687. 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).

First, Marshall contended counsel was ineffective for failing to challenge the validity of the prior convictions that were used to adjudicate him as a habitual criminal. Marshall contended the State did not demonstrate he was the person named in any of the eight certified judgments of conviction that the State presented to the sentencing court. Marshall did not allege any facts to support this claim.¹ Therefore, Marshall failed to allege specific facts that, if true, would entitle him to relief. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Marshall contended counsel was ineffective for informing him that the State had damaging evidence against him when it did not. Marshall’s claim that the State did not have damaging evidence

¹On appeal, Marshall argues the prior convictions had inconsistent identities and fingerprints. Marshall did not raise this argument in his petition below; therefore, we decline to consider it for the first time on appeal. See *McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

against him is belied by the record, which indicates the State had surveillance video of some of the crimes that depicted Marshall's face, distinctive tattoos, and distinctive clothing. Moreover, candid advice about the strength of the State's case is not deficient, *see Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 69, 412 P.3d 56, 62 (2018), and Marshall did not allege that he would not have pleaded guilty and would have insisted on going to trial had counsel not informed him of this evidence. Therefore, Marshall failed to allege specific facts that, if true, would entitle him to relief. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Marshall contended counsel was ineffective for coercing him into pleading guilty because he was still feeling the effects from drugs forced upon him by the district court. Marshall did not explain how counsel coerced him into pleading guilty. Therefore, Marshall failed to allege specific facts that, if true, would entitle him to relief. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fourth, Marshall contended counsel was ineffective for promising him a specific sentence. Marshall previously argued in a presentence motion to withdraw his guilty plea that counsel was ineffective for making promises regarding the outcome of sentencing, and the district court denied the motion. This claim is waived because it could have been raised on appeal from Marshall's judgment of conviction. *See Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999).

Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fifth, Marshall contended counsel was ineffective due to the existence of a conflict of interest. In particular, Marshall contended a conflict of interest existed because counsel testified against him at an evidentiary hearing on his presentence motion to withdraw plea and then represented him at sentencing.² “Conflict of interest and divided loyalty situations can take many forms, and whether an actual conflict exists must be evaluated on the specific facts of each case. In general, a conflict exists when an attorney is placed in a situation conducive to divided loyalties.” *Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) (quotation marks omitted). Prejudice is presumed only if “counsel actively represented conflicting interests and the conflict of interest adversely affected [the defendant’s] lawyer’s performance.” *Strickland*, 466 U.S. at 692 (internal quotation marks omitted).


Marshall did not allege that counsel’s participation at the evidentiary hearing adversely affected counsel’s performance at the sentencing hearing. Therefore, Marshall failed to allege specific facts that, if true, would entitle him to relief. Accordingly, we conclude the district court did not err by denying this claim.

²On appeal, Marshall also argues a conflict of interest existed because counsel failed to (1) file several motions, (2) protect any of his rights, and (3) adequately challenge the plea agreement when counsel knew he was still under the influence of drugs. Marshall did not raise these claims in his petition below; therefore, we decline to consider them for the first time on appeal. *See McNelton*, 115 Nev. at 415-16, 990 P.2d at 1275-76.

Marshall also argues on appeal that counsel was ineffective for deceiving him because “over half of the charges [were] never confronted to because of the lack of stacked up charges that should have been dismissed.” Marshall did not raise this claim in his petition below; therefore, we decline to consider this claim for the first time on appeal. *See McNelton*, 115 Nev. at 415-16, 990 P.2d at 1275-76.

For the foregoing reasons, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Bita Yeager, District Judge
Woodrow June Marshall
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk