

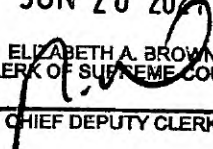
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESUS RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87542-COA

FILED

JUN 20 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Jesus Rodriguez appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on March 17, 2022, and a supplemental petition filed on September 20, 2022. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Rodriguez argues the district court erred by denying his claims that counsel was ineffective without first holding an evidentiary hearing on all of his claims. 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 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). 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 the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Rodriguez claimed that counsel was ineffective for failing to investigate a possible defense regarding his statement to police. Rodriguez claimed that counsel should have investigated his statement because he was not given his *Miranda*¹ warnings. He also claimed counsel should have investigated why he was arrested for drugs, and not the charges he was convicted of, and why there was no arrest warrant.

The district court held an evidentiary hearing on this claim. The district court found that Rodriguez failed to demonstrate what investigation counsel should have done with regard to the *Miranda* claim or the arrest-warrant claim. This finding is supported by the record. Counsel testified that he listened to the audio of the interview, and he determined there was nothing to challenge. Rodriguez failed to provide this court with a copy of the interview transcript; accordingly, we presume the interview transcript supports the district court's decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007); *see also* NRAP 30(b); *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."). Further, Rodriguez did not present any evidence or testimony to support his arrest-warrant claim. Therefore, Rodriguez failed to demonstrate counsel's performance was deficient or a reasonable probability he would have insisted on going to trial had counsel done further

¹*Miranda v. Arizona*, 384 U.S. 436 (1966).

investigation. Thus, we conclude that the district court did not err by denying this claim.

Second, Rodriguez claimed that counsel was ineffective because he should have investigated a defense that the victims, Rodriguez's ex-wife, and Rodriguez's son's girlfriend falsified the allegations against him in order to receive immigration benefits. He also claimed that the medical examinations of the victims would support his allegation regarding immigration benefits.

The district court held an evidentiary hearing on this claim. The district court found that Rodriguez failed to demonstrate what further investigation into the alleged immigration benefits would have yielded. This finding is supported by the record. Counsel testified that he and his investigator looked into whether the victims, Rodriguez's ex-wife, and Rodriguez's son's girlfriend received any immigration benefits. Further, counsel asked the State if these people had received a benefit. Counsel and the State could not find evidence of any immigration benefit. Rodriguez failed to demonstrate what evidence counsel could have found had counsel done further investigation. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (stating a petitioner alleging that an attorney should have conducted a better investigation must demonstrate what the results of a better investigation would have been). He also failed to demonstrate how the victim's medical examinations would have supported his claim that immigration benefits were received. And Rodriguez did not provide this court with a copy of the medical examinations. *See Cuzze*, 123 Nev. at 603, 172 P.3d at 135; *see also* NRAP 30(b); *Greene*, 96 Nev. at 558, 612 P.2d at 688. Therefore, we conclude that Rodriguez failed to demonstrate counsel's performance was deficient or a reasonable probability he would not have

pleaded guilty had counsel done further investigation. Thus, we conclude the district court did not err by denying this claim.

Third, Rodriguez claimed that counsel was ineffective for failing to communicate and for failing to provide him with discovery. Rodriguez claimed that counsel failed to return his phone calls or acknowledge requests he made. He also alleged that counsel did not inform him when hearings were moved. Further, he claimed that counsel failed to provide him with a copy of the victims' medical examinations which would have corroborated his claim that the victims were lying to receive an immigration benefit.

Rodriguez failed to specifically allege how the lack of communication with counsel affected his decision to plead guilty. Further, he failed to demonstrate that his decision to plead guilty was affected by his not receiving the victim's medical examination report. As referenced above, Rodriguez had an opportunity to present the medical examinations and show that they would have made a difference to his decision to plead guilty. However, Rodriguez did not provide the medical examinations at the evidentiary hearing nor does he include them on appeal. Therefore, we conclude that Rodriguez failed to demonstrate a reasonable probability he would have insisted on going to trial had counsel communicated more or provided the medical examinations. Thus, we conclude that the district court did not err by denying this claim without holding an evidentiary hearing.

Fourth, Rodriguez claimed counsel was ineffective for promising him that, if he pleaded guilty, he would only receive a sentence of three months to one year in prison. The district court found that Rodriguez acknowledged in the guilty plea agreement that he was not

“promised or guaranteed any particular sentence by anyone [and he was] signing this agreement voluntarily, after consultation with [his] attorney, and [he was] not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.” Further, the district court found that, at the change of plea hearing, Rodriguez was asked whether anyone forced him to plead or promised him anything in order to get him to plead guilty. He answered in the negative. The record supports the findings of the district court. Further, Rodriguez acknowledged in the guilty plea agreement and at the plea colloquy that the sentencing range was two years to 20 years in prison, well above the alleged promised sentence. As a result, we conclude that Rodriguez failed to demonstrate a reasonable probability he would have insisted on going to trial had counsel not made this alleged promise. Thus, we conclude that the district court did not err by denying this claim without first conducting an evidentiary hearing.

Fifth, Rodriguez claimed counsel was ineffective for failing to seek medical or psychological examinations of the victims. The district court found that such a request would have been futile because the victims had already undergone a medical examination and a psychological examination was not permitted under NRS 50.700(1). The record supports the findings of the district court, and counsel is not ineffective for failing “to submit to a classic exercise in futility.” *Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (internal quotation marks omitted). Thus, we conclude that the district court did not err by denying this claim without first conducting an evidentiary hearing.

Next, Rodriguez argues the district court erred by denying his challenge to the validity of his plea based on the ineffective assistance of

counsel without first conducting an evidentiary hearing. "A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel." *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008).

In his petition, Rodriguez claimed that counsel coerced him into pleading guilty by telling him he would not receive adequate health care for his deteriorating eyesight until he went to prison and he would not go to trial for six to seven years unless he pleaded guilty. The district court found that Rodriguez voluntarily entered into his plea agreement based on his guilty plea agreement and responses during the plea canvass. The district court found that Rodriguez affirmed that he was pleading guilty because the State could present sufficient evidence of his guilt and that he was not acting under duress or coercion or by virtue of any promises of leniency. The record supports the findings of the district court, and we conclude that Rodriguez failed to demonstrate that his plea was invalid. Thus, we conclude that the district court did not err by denying this claim without first conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Monica Trujillo, District Judge
Steven S. Owens
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk