

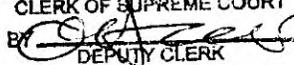
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEION MARCUS BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87526-COA

FILED

JUL 15 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Deion Marcus Brown appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 28, 2023. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

Brown contends the district court erred by denying his claim that the State had offered a plea deal involving a prison term of 1 to 4 years and that this offer was “withdrawn due to his confusion as to the intricacies of a plea and the fact that probation was not an option.” Brown’s claim did not allege that his “plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel,” *see* NRS 34.810(1)(a); rather, it appeared to contend that Brown rejected a prior plea offer because he was confused as to its terms. Therefore, Brown’s claim was outside the scope of claims permissible in a postconviction petition for a writ of habeas corpus stemming from a guilty plea, and we conclude the district court did not err by denying this claim.

Brown also contends the district court erred by denying his claims that 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). 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). 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, Brown claimed that counsel was ineffective for "assur[ing]" him that he would receive probation. The district court found that Brown had acknowledged in the guilty plea agreement that the sentencing judge had discretion in determining whether to grant him probation and that Brown had confirmed during the plea canvass that he understood his sentence was up to the sentencing judge. The district court's findings are supported by the record.

Moreover, Brown acknowledged in the plea agreement that he had not been promised or guaranteed a particular sentence by anyone and that he was not signing the agreement by virtue of any promises of leniency. Brown also stated at the plea canvass that no one had made any promises, other than what was contained in the plea agreement, to get him to enter his plea, and he acknowledged that no one was in a position to promise him

probation, leniency, or special treatment. In light of the foregoing, Brown failed to allege specific facts indicating a reasonable probability he would not have pleaded guilty and would have insisted on going to trial had counsel not made the alleged assurance. Accordingly, we conclude the district court did not err by denying this claim.

Second, Brown claimed that counsel was ineffective for failing to provide him with discovery. Brown did not specify what discovery counsel failed to provide or how providing any such discovery would have affected his decision to plead guilty.¹ Therefore, Brown failed to allege specific facts indicating counsel was deficient or a reasonable probability he would not have pleaded guilty and would have insisted on going to trial but for the alleged error. Accordingly, we conclude the district court did not err by denying this claim.

Brown also contends the district court erred by denying his claim that he was not competent to enter his plea. Brown claimed he had a “diminished mental capacity as to the details of the legal system and the rights afforded by it”; however, Brown did not specify what mental illness he suffered from or how any such mental illness impaired his ability to consult with counsel or to understand the proceedings against him.² See *Riker v. State*, 111 Nev. 1316, 1325, 905 P.2d 706, 711 (1995) (discussing the standard of competency required to enter a guilty plea). Brown also did

¹To the extent Brown attempts to add facts on appeal to support this claim, we decline to consider these facts for the first time on appeal. See *McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

²To the extent Brown attempts to add facts on appeal to support this claim, we decline to consider these facts for the first time on appeal. See *id.* And we reject Brown’s request to have this court subpoena his medical records “to prove [his] mental health issues.”

not specify any provision of the plea agreement or any right that he did not understand. Therefore, Brown failed to allege specific facts indicating he was not competent to enter his plea or that his plea was not knowingly or voluntarily entered. Accordingly, we conclude the district court did not err by denying this claim.

Finally, Brown contends that (1) the trial-level court stated his criminal history in a way that indicated the court was biased; (2) the trial-level court did not acknowledge his mental illness or his psychosexual evaluation in determining his sentence; (3) the trial-level court denied his request for a continuance due to factors outside of his control; (4) the trial-level court imposed the maximum sentence because it was in an "irritated mood"; and (5) counsel failed to take his mental health issues into consideration when explaining the differences between the plea deals. These additional arguments were not raised below, and we therefore 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.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

³Brown has requested the appointment of counsel on appeal. In light of this court's disposition, we conclude the appointment of counsel is not warranted.

cc: Hon. Tara D. Clark Newberry, District Judge
Deion Marcus Brown
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk