

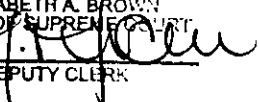
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JARVIS ALLEN ARAGON,  
Appellant,  
vs.  
WARDEN OF HDSP AND THE STATE  
OF NEVADA,  
Respondents.

No. 89390-COA

**FILED**

**JUN 16 2025**

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

*ORDER OF AFFIRMANCE*

Jarvis Allen Aragon appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 5, 2024. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Aragon claims the district court erred by denying his claim that 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

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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).

Aragon claimed counsel was ineffective because he coerced Aragon in pleading pursuant to *Alford*.<sup>1</sup> Aragon raised this claim in his presentence motion to withdraw his plea, which was denied by the district court. Because Aragon could have challenged the denial of this claim on direct appeal, this claim is inappropriately presented in the instant petition. *Cf. Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (“[C]laims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings.”), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999). Moreover, Aragon failed to demonstrate counsel coerced him into pleading guilty. In his postconviction habeas petition, Aragon alleged counsel coerced him because: (1) counsel told him he was likely to be convicted and was facing 35 years to life in prison; (2) he repeatedly rejected plea deals that were offered; (3) counsel did not give him sufficient time to consider the plea; (4) he was taken to a different courtroom to enter his plea;

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<sup>1</sup>Aragon pleaded guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). An *Alford* plea is equivalent to a guilty plea insofar as how the court treats a defendant. *See State v. Lewis*, 124 Nev. 132, 133 n.1, 178 P.3d 146, 147 n.1 (2008), *overruled on other grounds by State v. Harris*, 131 Nev. 551, 556, 355 P.3d 791, 793-94 (2015).

and (5) he informed counsel he wanted to withdraw his plea within days of entering it.

Counsel's candid advice about the likely outcome at trial is not coercion. *Cf. Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 69, 412 P.3d 56, 62 (2018) (noting that one of the roles of an attorney is to provide candid advice to his or her client); *see also Whitman v. Warden*, 90 Nev. 434, 436, 529 P.2d 792, 793 (1974) ("A guilty plea is not coerced merely because motivated by a desire to avoid the possibility of a higher penalty."). Further, time constraints exist in every criminal case, and Aragon fails to demonstrate that counsel coerced his plea by informing him of the deadline, particularly given Aragon's voluntary participation in the settlement conference.<sup>2</sup> *See Stephenson v. State*, 131 Nev. 598, 604-05, 354 P.3d 1277, 1281 (2015). And Aragon's rejection of other plea offers did not demonstrate coercion. Finally, neither his entering his plea in a different courtroom than the one in which he negotiated the plea<sup>3</sup> nor his asking counsel to withdraw his plea after entering it demonstrate that counsel coerced him into pleading guilty. Therefore, we conclude Aragon failed to demonstrate that counsel was deficient. Thus, the district court did not err by denying this claim without an evidentiary hearing.

Next, Aragon argues the district court erred by denying his claims that his plea was not knowingly and voluntarily entered. A district

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<sup>2</sup>SCR 252(2)(a), (b).

<sup>3</sup>Aragon's plea was required to be taken by a judge other than the judge who participated in the settlement conference. *See* SCR 252(2)(e).

court may allow a defendant “to withdraw [his] guilty plea that was not entered knowingly and voluntarily in order to correct a manifest injustice.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008); *see also* NRS 176.165; *Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014) (stating NRS 176.165 “sets forth the standard for reviewing a post-conviction claim challenging the validity of a guilty plea”). “A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel.” *Rubio*, 124 Nev. at 1039, 194 P.3d at 1228. “[T]his court will not overturn the district court’s determination on manifest injustice absent a clear showing of an abuse of discretion.” *Id.* at 1039, 194 P.3d at 1229 (quotation marks omitted).

First, Aragon claimed his plea was not knowingly and voluntarily entered because: (1) the district court erred by denying his presentence motion to withdraw his plea; (2) his prior bad acts were admitted without an evidentiary hearing; (3) the parties met in chambers without his knowledge; and (4) there was a “DA denial.” Aragon did not explain how these issues affected his decision to plead pursuant to *Alford*. He filed his presentence motion to withdraw his plea after he entered his plea, so he has not shown that the resolution of his motion impacted his previously entered plea. Additionally, Aragon failed to demonstrate his other sexual acts involving the victim and her sister were inadmissible given the bounds of NRS 48.045(3) (“Nothing in this section shall be construed to prohibit the admission of evidence in a criminal prosecution for a sexual offense that a person committed another crime, wrong or act that constitutes a separate sexual offense.”). Aragon also failed to explain

how the purported meeting in chambers affected his decision to plead. Finally, Aragon did not explain what the “DA denial” was or how it affected his decision. Therefore, we conclude the district court did not abuse its discretion by denying this claim without first conducting an evidentiary hearing.<sup>4</sup>

Second, Aragon claimed his plea was not knowingly and voluntarily entered because counsel failed to investigate. He claimed that had counsel investigated, counsel would have discovered the victims conspired to make up statements about Aragon to get him out of their lives. Aragon claimed he told counsel that, a few weeks before the allegations were made against Aragon, he overheard the victim and her sister saying they were going to fabricate allegations against him and could send him to prison for 20 years. He claimed he told his wife about the statements. Thus, he claimed counsel was ineffective because counsel urged him to plead guilty when this investigation had not been done.

Aragon fails to demonstrate further investigation into this issue would have caused counsel to change the recommendation to plead pursuant to *Alford*. See *Hill*, 474 U.S. at 59 (stating that, in guilty plea cases, whether a defendant is prejudiced by counsel’s failure to investigate potentially exculpatory evidence “will depend on the likelihood that discovery of the evidence would have led counsel to change [the]

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<sup>4</sup>To the extent Aragon raised these claims as separate independent grounds for relief, these claims were outside the scope of a postconviction petition challenging a judgment of conviction entered pursuant to an *Alford* plea. See NRS 34.810(1)(a).

recommendation as to the plea,” which itself will depend in large part on “whether the evidence likely would have changed the outcome of a trial”). Therefore, we conclude the district court did not abuse its discretion by denying this claim without first conducting an evidentiary hearing.

Next, Aragon argues the district court erred by denying his freestanding claim of actual innocence. The Nevada Supreme Court has never held that a freestanding claim of actual innocence can be raised in a postconviction petition for a writ of habeas corpus. *See Berry v. State*, 131 Nev. 957, 966 n.2, 967 n.3, 363 P.3d 1148, 1154 nn. 2, 3 (2015) (noting that a claim of actual innocence is a “gateway through which a habeas petitioner must pass to have [their] otherwise barred constitutional claim considered on the merits” and that it is not clear whether a freestanding claim of actual innocence may be raised in a postconviction petition for a writ of habeas corpus (quotation marks omitted)). However, the Legislature recently created a remedy that allows people who have been convicted to assert their factual innocence based on newly discovered evidence. *See* NRS 34.900-.990. In light of this new remedy, we decline to consider Aragon’s freestanding claim of actual innocence as he may raise this claim in a petition filed pursuant to NRS 34.900.<sup>5</sup>

Next, Aragon argues the district court erred by denying his claim that there was an abuse of the process and a *Brady*<sup>6</sup> violation. Aragon

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<sup>5</sup>We express no opinion as to whether Aragon can satisfy the requirements of a petition to establish factual innocence.

<sup>6</sup>*Brady v. Maryland*, 373 U.S. 83 (1963).

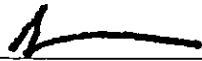
did not support these claims below with specific facts that, if true, would entitle him to relief. He failed to specify what the abuse of the process was or how *Brady* was violated. Therefore, we conclude the district court did not err by denying these claims without first conducting an evidentiary hearing.

Next, Aragon argues the district court erred by denying his petition without his being present. The record indicates the hearing at issue was not an evidentiary hearing, no testimony was presented, and the district court merely stated its findings on the record. Aragon fails to demonstrate he was prejudiced by his absence at the hearing. *Cf. Gebers v. State*, 118 Nev. 500, 504, 50 P.3d 1092, 1094-95 (2002) (concluding a postconviction habeas petitioner's statutory rights were violated when she was not present at a hearing where testimony and evidence were presented). Therefore, Aragon fails to demonstrate he is entitled to relief.

Finally, Aragon argues the district court abused its discretion by declining to appoint counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Because the district court granted Aragon leave to proceed in forma pauperis and his petition was a first petition not subject to summary dismissal, *see* NRS 34.745(1), (3), Aragon met the threshold requirements for the appointment of counsel, *see* NRS 34.750(1); *Renteria-Novoa*, 133

Nev. at 76, 391 P.3d at 760-61. However, the district court found that the issues in this matter were not difficult, Aragon was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. For these reasons, the district court denied the motion to appoint counsel. The record supports the decision of the district court, and we conclude the district court did not abuse its discretion by denying the motion for the appointment of counsel.

Having concluded that Aragon is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

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<sup>7</sup>On appeal, Aragon appears to have added additional claims and facts to support his petition. Because these claims were not raised below and the additional facts were not considered by the district court, we decline to consider them for the first time on appeal. *See Wade v. State*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).



cc: Hon. Erika D. Ballou, District Judge  
Jarvis Allen Aragon  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk