

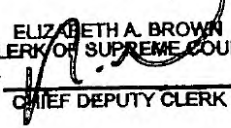
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARMANDO DELAROSA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89428-COA

FILED

SEP 29 2025

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

ORDER OF AFFIRMANCE

Armando Delarosa appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 7, 2021, and supplement. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Delarosa contends that the district court erred in denying his claim of ineffective assistance of trial-level counsel. 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 the 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).

First, Delarosa contends that the district court erred in rejecting his claim that trial-level counsel was ineffective for failing to inform him that a plea offer extended on July 20, 2018, which Delarosa rejected at a hearing on that date, would expire at the end of that day. He contends that the district court erred in denying this claim without conducting an evidentiary hearing on the habeas petition but, instead, relying on the record of the presentence motion to withdraw proceedings.

"[C]ounsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Missouri v. Frye*, 566 U.S. 134, 145 (2012) (finding deficient performance where counsel "allowed the offer to expire without advising the defendant or allowing him to consider it"). To demonstrate prejudice when a plea offer has been rejected or expired due to counsel's deficient performance "defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer . . . [and] a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it." *Id.* at 147. Additionally, "it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time." *Id.*

According to the record, counsel presented a plea offer (two counts of attempted lewdness with a minor) from the State to Delarosa before the July 20, 2018, hearing, which Delarosa rejected. The district

court canvassed Delarosa about the offer at the State's request and Delarosa told the court that he did not accept the offer because he anticipated being exonerated at trial. On July 23, 2018, Delarosa asked the State to again extend the July 20 offer, but the State instead offered to permit Delarosa to plead guilty to two counts of lewdness with a minor, which Delarosa accepted.

Delarosa later moved to withdraw the guilty plea asserting trial-level counsel was ineffective. At the hearing, the State introduced, through trial-level counsel's testimony, a letter counsel presented to Delarosa describing the prior offers, informing Delarosa of his potential sentencing exposure if convicted at trial, and advising Delarosa it was in his best interest to accept the July 20 offer. Delarosa acknowledged that counsel presented the letter again after the July 20 hearing when Delarosa was in a holding cell. Trial-level counsel testified that he discussed when the July 20 offer would expire.

Based on this record, Delarosa did not demonstrate that trial-level counsel was ineffective when informing Delarosa about the July 20 plea offer. The record shows that counsel presented the July 20 plea offer to Delarosa before it expired and he rejected it. Although evidence submitted with the petition indicates trial-level counsel did not visit the detention center on July 20, the record indicates that counsel continued to discuss the plea offer with Delarosa when they left the courtroom and later when Delarosa was in a courthouse holding cell. Although Delarosa asserted he tried to contact counsel over the weekend when the offer had already expired, he did not allege any facts suggesting he changed his mind

during the pendency of the offer given his adamant refusal and insistence of his innocence on July 20. Thus, considering the extensive record already developed concerning whether Delarosa's guilty plea was knowing and voluntary, the district court did not err in denying this claim without conducting an evidentiary hearing.

Second, Delarosa contends that the district court erred in relying on this court's order on direct appeal affirming the judgment of conviction and the denial of the presentence motion to withdraw the guilty plea. He contends the direct appeal decision should be stricken because Delarosa had waived his right to appeal under the plea agreement. Alternatively, Delarosa contends that the decision is of limited value because his counsel that represented him for his motion to withdraw his plea was ineffective as well.

We conclude that these arguments lack merit. Although the written plea agreement contained a direct appeal waiver, by litigating a direct appeal from his judgment of conviction, Delarosa invited the very error of which he now complains. *See Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) ("The doctrine of 'invited error' embodies the principle that a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit." (quotation marks omitted)). Thus, he cannot now claim that this court erred in considering his appeal when that error inured to his benefit in that he had his appeal considered on the merits. As to his alternative argument, to the extent Delarosa's contentions in this appeal rely on the assertion that his counsel during his motion to withdraw was ineffective,

these arguments were not raised below and we decline to consider them for the first time on appeal. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989) ("This court will not consider issues raised for the first time on appeal.").

Having considered Delarosa's contentions and concluding that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Ronald J. Israel, District Judge
Lowe Law, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk