

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TYLER CHARLES KENNEDY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90198-COA

FILED

JAN 28 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Melissa Miller*
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Tyler Charles Kennedy appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 20, 2023, and a supplemental habeas petition filed on January 3, 2024. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Kennedy was charged with five counts of driving under the influence of a controlled substance resulting in a crash causing death or substantial injury to another and five counts of reckless driving causing death or substantial bodily harm. For the crash, Kennedy had ingested fentanyl and was speeding when he crossed the center line and hit an oncoming vehicle with five passengers. Three of the passengers were killed and two were severely injured. While counsel advised him to not take an offer, Kennedy agreed to plead guilty to three counts of driving under the influence of a controlled substance resulting in a crash causing death. At the change of plea hearing, Kennedy was specifically informed he could receive a sentence of up to 24 to 60 years in prison. At sentencing, Kennedy received a sentence of 24 to 60 years in prison. He did not file a direct appeal from his judgment of conviction.

Kennedy argues the district court erred by denying his claims that counsel was ineffective without first conducting an evidentiary hearing. 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, Kennedy argued counsel was ineffective for failing to file a direct appeal on his behalf. Kennedy alleged he was not satisfied with his sentence and conviction and "likely" made it obvious he wanted to appeal because he was given the maximum sentence. "[C]ounsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction." *Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011). "[D]issatisfaction with a criminal conviction or sentence is not uncommon," and "[t]he burden is on the client to indicate to his attorney that he wishes

to pursue an appeal.” *Id.* at 979, 267 P.3d 800-01 (quoting *Davis v. State*, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999)). Courts must consider the totality of the circumstances, “focusing on the information that counsel knew or should have known at the time.” *Id.* at 979, 267 P.3d at 801. *Toston* set out several factors for the court to consider as the totality of the circumstances: whether the defendant received the sentence he bargained for, whether the defendant reserved certain issues for appeal, whether the defendant indicated a desire to challenge his sentence within the period for filing an appeal, and whether the defendant sought relief from the plea prior to sentencing. *Id.* at 979-80, 267 P.3d at 801.

Here, Kennedy did not allege he requested counsel to file an appeal. As stated above, Kennedy pleaded guilty contrary to the advice of counsel, was told he could receive up to 24 to 60 years in prison, did not reserve any issues for appeal, and did not seek relief from his plea prior to sentencing. Further, the sentencing transcript does not demonstrate, and Kennedy did not allege, he actually expressed dissatisfaction at his sentence. Given these circumstances, we conclude Kennedy failed to allege specific facts that are not belied by the record and, if true, would entitle him to relief. Thus, Kennedy failed to demonstrate counsel was deficient for failing to file an appeal. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.¹

¹The district court denied this claim solely because Kennedy failed to demonstrate he was prejudiced by counsel’s failure to file an appeal. This was error because, in situations where counsel is found to be deficient for failing to file an appeal, prejudice is presumed. *Id.* at 976, 267 P.3d at 799. However, because the district court reached the correct result, we affirm the denial of this claim. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it was based on the wrong reason).

Second, Kennedy argued counsel was ineffective for failing to hire an investigator or sufficiently investigate. Kennedy contended counsel should have investigated whether he was the cause of the accident or whether the accident could have been caused by an animal. He claimed counsel should have hired an accident reconstructionist.

In this case, a conviction under NRS 484C.430(1) required that Kennedy (1) be under the influence of a controlled substance and (2) do any act or neglect any duty imposed by law while driving or in actual physical control of any vehicle that proximately caused the death of another person. We conclude Kennedy failed to demonstrate that further investigation into the accident would have shown he did not proximately cause the death of another.

As for his allegation that he told police officers he saw an animal and swerved to avoid it, “a criminal defendant can only be exculpated where, due to a superseding cause, he was in no way the proximate cause of the result.” *Etcheverry v. State*, 107 Nev. 782, 785, 821 P.2d 350, 351 (1991) (internal quotation marks omitted). “[A]n intervening cause must be a superseding cause, or the sole cause of the injury in order to completely excuse the prior act.” *Id.* Even assuming Kennedy swerved to avoid an animal, Kennedy failed to allege the animal was a superseding or the sole cause of the injuries or to explain how the animal negated his culpability given his unlawful rate of speed and the fact that he swerved into oncoming traffic. Therefore, he failed to allege sufficient facts that are not belied by the record, and if true, would entitle him to relief. Thus, he failed to demonstrate counsel’s performance was deficient or a reasonable probability he would not have pleaded guilty had counsel done further

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

Finally, Kennedy argued counsel was ineffective for providing misinformation about how Kennedy's sentence would be calculated in prison.² Specifically, Kennedy claimed that trial counsel advised him he would receive 40% off his minimum term and that this advice was wrong because Kennedy pleaded guilty to category B felonies and has to serve the entirety of his minimum terms. Kennedy claimed that, had counsel not misinformed him, he would not have pleaded guilty.

Parole is a collateral consequence of pleading guilty. See *Palmer v. State*, 118 Nev. 823, 830, 59 P.3d 1192, 1196 (2002) (concluding "parole is a collateral consequence of a guilty plea because it is served in lieu of actual prison time and is wholly beyond the jurisdiction of the district judge to grant" (internal quotation marks omitted)). While counsel is not required to inform a defendant of collateral consequences, counsel's affirmative misrepresentation of a collateral consequence may constitute deficient performance. See *Rubio v. State*, 124 Nev. 1032, 1043, 14 P.3d 1224, 1232 (2008) (adopting the affirmative misrepresentation exception to the collateral consequence rule). We conclude Kennedy alleged sufficient facts that are not belied by the record, and if true, would entitle him to relief.

²To the extent Kennedy added additional facts or argument to this claim that were not raised below in his petition, we decline to consider them for the first instance on appeal. See *State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

Therefore, we reverse and remand this claim for an evidentiary hearing.³
Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Robert W. Lane, District Judge
SDS Chartered, LLC
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk

³The State argues that Kennedy failed to support his claim with affidavits or supporting documentation that counsel misinformed him. However, the State fails to demonstrate Kennedy was required to provide such documentation before being granted an evidentiary hearing. To be entitled to an evidentiary hearing, a petitioner is required only to allege specific facts that are not belied by the record and, if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 686 P.2d 222 (1984); *cf. Mann v. State*, 118 Nev. 351, 354, 356, 46 P.3d 1228, 1230, 1231 (2002) (holding “it is improper for the district court to resolve a factual dispute created by affidavits without conducting an evidentiary hearing”).