

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FELICIANO GOMEZ,
Appellant,
vs.
JEROMY BEAN, WARDEN AND THE
STATE OF NEVADA,
Respondents.

No. 90828-COA

FILED

APR - 9 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Feliciano Gomez appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on November 17, 2022. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

Gomez filed his petition pro se and alleged several claims that counsel was ineffective. He also made a claim regarding the court interpreter. The district court found that the majority of Gomez's claims were either belied by the record or were bare and naked. The district court orally denied those claims without holding an evidentiary hearing. The district court found that one of Gomez's claims, that he was improperly deprived of a direct appeal, warranted an evidentiary hearing. Thereafter, the district court appointed counsel for the limited issue of the appeal deprivation claim and held an evidentiary hearing on the claim. At the conclusion of the evidentiary hearing, the district court denied the appeal deprivation claim and issued a written order denying all of the claims raised in Gomez's petition.

Gomez argues the district court erred by denying his claims 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), and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). 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, Gomez claimed counsel was ineffective for promising him probation based on his lack of criminal history. The district court found this claim was belied by the record because Gomez acknowledged in the plea agreement and during the plea canvass that he had not been promised a particular sentence. The record supports the decision of the district court, and we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.¹

¹To the extent Gomez has raised additional facts and argument that were not presented in his petition, we decline to consider them for the first

Second, Gomez claimed counsel was ineffective for telling him he would receive more time if he chose to go to trial. The district court found that counsel's statement was candid advice about the likely outcome at trial, which did not demonstrate counsel's performance was deficient. We agree. *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). Thus, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.²

Third, Gomez claimed counsel was ineffective for failing to file an appeal on his behalf. Gomez claimed that counsel failed to consult with him regarding an appeal and that he and family members attempted to contact counsel to request an appeal. The duty to inform a defendant who pleaded guilty about the right to appeal only arises when the defendant inquires about the right to appeal or when the defendant may benefit from receiving such advice. *Toston v. State*, 127 Nev. 971, 977, 267 P.3d 795, 799 (2011). Further, "counsel 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." *Id.* at 978, 267 P.3d at 800. "The burden is on the client to indicate to his attorney that he wishes to pursue an appeal." *Davis v. State*, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999).

time on appeal. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

²On appeal, Gomez argues counsel did not actually give Gomez any advice because counsel failed to meet with Gomez after their initial consultation. This claim was not raised below, and we decline to consider it for the first time on appeal. *See Wade*, 105 Nev. at 209 n.3, 772 P.2d at 1293 n.3.

As to the duty to inform, the district court found that Gomez failed to demonstrate he was not informed regarding the right to appeal. The district court found the guilty plea agreement included information regarding the right to appeal, and Gomez stated in his petition that counsel told him there were no issues to appeal. Further, Gomez did not present any testimony or evidence at the evidentiary hearing that he was not informed regarding the right to appeal. Thus, the district court determined that counsel was not deficient for failing to inform Gomez of the right to appeal. The record supports the decision of the district court, and we conclude the district court did not err by denying this claim.

The district court also found that Gomez failed to demonstrate he requested an appeal or that he expressed dissatisfaction such that counsel should have filed an appeal on his behalf. At the evidentiary hearing, Gomez testified he tried to contact counsel to file an appeal and asked family members to also contact counsel. Gomez did not testify whether he talked to counsel or his assistant and actually conveyed to them that he wanted to appeal. Further, Gomez did not present any family members to testify they contacted counsel and asked him to file an appeal. While Gomez attached a declaration to his supplemental petition from his wife, the district court found that the statement in the affidavit was vague and the wife failed to appear for the evidentiary hearing. Moreover, the district court found counsel's testimony credible that, had Gomez conveyed to either counsel or his assistant that Gomez wanted to appeal, counsel would have filed the appeal. This court will not "evaluate the credibility of witnesses because that is the responsibility of the trier of fact." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). Thus, the record supports the decision of the district court. Therefore, Gomez failed to

demonstrate counsel's performance was deficient, and we conclude the district court did not err by denying this claim.

Finally, Gomez claimed counsel was ineffective for failing to communicate, failing to provide him with discovery in Spanish, and failing to provide him with a copy of the guilty plea agreement in Spanish. These claims 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). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Danielle K. Pieper, District Judge
Law Office of Rachael E. Stewart
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk