

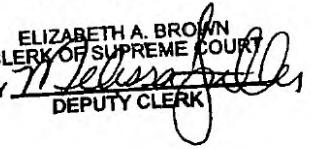
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JERI JOHNNY THOMAS, II,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 91213-COA

FILED

MAY 21 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jeri Johnny Thomas, II appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on July 9, 2025.¹ Eighth Judicial District Court, Clark County; Bitu Yeager, Judge.

In his pleading, Thomas alleged that his counsel did not adequately advise him of the consequences of his plea and that he is innocent. The district court construed Thomas' motion as a postconviction petition for a writ of habeas corpus and found that the record demonstrated Thomas acknowledged he was informed of the consequences of his plea and knowingly and voluntarily pleaded guilty. The district court also declined to consider Thomas' claim of actual innocence because it did not comply with the procedural requirements of NRS Chapter 34.

To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must

¹Thomas' pleading was titled "motion to withdrawal [sic] plea," which the district court construed as a postconviction petition for a writ of habeas corpus pursuant to *Harris v. State*, 130 Nev. 435, 448-49, 329 P.3d 619, 628 (2014). Thomas does not challenge this determination on appeal.

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).

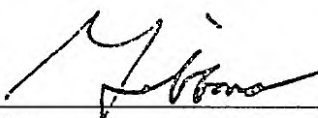
The record supports the district court's findings. Thomas' plea agreement expressly stated the potential sentence ranges to which he was subject and included Thomas' affirmation that he was voluntarily executing the agreement after consultation with his counsel about the elements and nature of the charges against him. During his plea canvass, Thomas affirmed that he had discussed his case and the plea agreement with counsel and was satisfied with counsel's advice. Thomas also affirmed that he understood the terms of the plea agreement, the charges to which he was pleading guilty, the consequences of pleading guilty, and that he was not acting under duress or coercion or by virtue of any promises in entering his

plea. We therefore conclude the district court did not err in denying Thomas' claim.

As to the district court's refusal to consider Thomas' actual innocence claim, to the extent Thomas raised a freestanding claim of actual innocence, neither this court nor the supreme court has determined "whether and, if so, when a free-standing actual innocence claim exists" within the scope of a postconviction habeas petition. *Berry v. State*, 131 Nev. 957, 967 n.3, 363 P.3d 1148, 1154 n.3 (2015). The legislature filled this gap in Nevada law by creating a new postconviction remedy: a petition to establish factual innocence. *See Sanchez v. State*, 140 Nev., Adv. Op. 78, 561 P.3d 35, 38 (2024). Thus, any freestanding claim of factual innocence by Thomas should be raised and considered in a petition to establish factual innocence. *See* NRS 34.900-.990. The district court therefore did not err in declining to consider this claim.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

²We express no opinion as to whether Thomas could meet the requirements of NRS 34.900-.990.

cc: Hon. Bitá Yeager, District Judge
Jeri Johnny Thomas, II
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk