

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD EUGENE BALL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70873

**FILED**

MAY 17 2017

ELIZABETH A. BROWN  
CLERK OF DISTRICT COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Richard Eugene Ball appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Ball argues the district court erred in denying his claims of ineffective assistance of counsel raised in his June 12, 2014, petition and supplement. To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, 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

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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, Ball argued his counsel was ineffective for coercing him into pleading guilty by failing to explain the potential range of punishments and advising him he would be adjudicated a habitual criminal if he did not accept a plea offer. Ball failed to demonstrate his counsel's performance was deficient or resulting prejudice. At the evidentiary hearing, Ball's counsel testified he did not coerce Ball into pleading guilty and stated he explained to Ball the range of punishments Ball faced, including adjudication as a habitual criminal. The district court found counsel to be credible and concluded counsel's actions were objectively reasonable. Substantial evidence supports that conclusion. Moreover, Ball acknowledged in the written plea agreement and at the plea canvass that he had not been coerced into entering his guilty plea. Further, Ball was advised in the written plea agreement and at the plea canvass of the potential punishments he faced by entry of his plea. Under these circumstances, Ball failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel discussed these issues in a different manner with Ball. Therefore, the district court did not err in denying this claim.<sup>1</sup>

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<sup>1</sup>To the extent Ball raised a separate claim that he should be permitted to withdraw his guilty plea because it was involuntarily entered  
*continued on next page . . .*

Second, Ball argued his counsel was ineffective for informing the district court Ball's pro se presentence motion to withdraw his guilty plea lacked merit and for failing to supplement that motion. Ball failed to demonstrate resulting prejudice. At the evidentiary hearing, counsel testified he was appointed after Ball had filed a pro se motion to withdraw his guilty plea and he then discussed that issue with Ball. Counsel stated that Ball did not actually wish to withdraw his guilty plea, but rather wished to negotiate a lower sentence. Counsel concluded that was not a proper basis upon which to move to withdraw a guilty plea and informed the district court of that conclusion. The district court found counsel was deficient for failing to file a supplement to the motion to withdraw guilty plea, but Ball was not prejudiced by the deficiency because there was no fair and just reason for withdrawing the guilty plea. We conclude the district court did not err in denying this claim. *See Molina v. State*, 120 Nev. 185, 191, 87 P.3d 533, 537 (2004); *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000).

Third, Ball argued the district court erred in denying his presentence motion to withdraw his guilty plea. This claim was not based on an allegation that Ball's plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel,

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*... continued*

due to the coercion from his counsel, we conclude, given the district court's findings regarding this issue, Ball failed to demonstrate withdrawal of his plea was necessary to correct a manifest injustice. *See NRS 176.165.*

and therefore, was not permissible in a postconviction petition for a writ of habeas corpus stemming from a guilty plea. See NRS 34.810(1)(a). Therefore, the district court did not err in denying relief for this claim.

Having concluded Ball is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

, C.J.  
Silver

, J.  
Tao

, J.  
Gibbons

cc: Hon. Carolyn Ellsworth, District Judge  
Law Office of Julian Gregory, L.L.C.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk