

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDWARD SETH TRZASKA, A/K/A
SETH E. TRZASCA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70900

FILED

AUG 15 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Edward Seth Trzaska appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie J. Vega, Senior Judge.

Trzaska argues the district court erred in denying his claims of ineffective assistance of counsel raised in his August 28, 2015, petition and his February 16, 2016, supplement. To prove ineffective assistance of counsel, a petitioner must demonstrate 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, 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*). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must demonstrate a reasonable probability, but for counsel's errors, 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, 988, 923 P.2d 1102, 1107 (1996). 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).

First, Trzaska argued his counsel was ineffective for failing to properly communicate with him. Trzaska asserted counsel did not explain the facts of the case and potential defenses, and also pressured him into pleading guilty by threatening he would be adjudicated as a habitual criminal if he did not accept a plea bargain. Trzaska failed to demonstrate his counsel's performance was deficient or resulting prejudice. In the written plea agreement, Trzaska acknowledged he had discussed the charges and any possible defenses with his counsel and counsel had answered all of his questions regarding the agreement. Trzaska further asserted at the plea canvass that his counsel had answered all of his questions. In addition, Trzaska acknowledged in the written plea agreement that he accepted the plea bargain voluntarily and did not enter his guilty plea under duress or coercion. Under these circumstances, Trzaska failed to demonstrate his counsel acted in an objectively unreasonable manner or a reasonable probability he would have refused to plead guilty and insisted on proceeding to trial had counsel explained the case and guilty plea in a different manner. Therefore, we conclude the district court did not err in denying this claim.¹

¹To the extent Trzaska raised a separate claim asserting he should be permitted to withdraw his guilty plea because it was involuntarily entered due to coercion from his counsel, Trzaska failed to demonstrate withdrawal of his plea was necessary to correct a manifest injustice. See NRS 176.165.

Second, Trzaska argued his counsel was ineffective for failing to investigate the facts surrounding his case. Trzaska failed to demonstrate his counsel's performance was deficient or resulting prejudice. Trzaska merely asserted counsel should have investigated the facts of this case, but he failed to demonstrate investigation into these issues would have actually uncovered favorable evidence. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming counsel did not conduct an adequate investigation must specify what a more thorough investigation would have uncovered). Given these circumstances, Trzaska failed to demonstrate his counsel acted in an objectively unreasonable manner or a reasonable probability he would have refused to plead guilty and insisted on proceeding to trial had counsel investigated the allegations against Trzaska. Therefore, we conclude the district court did not err in denying this claim.

Third, Trzaska argued his counsel was ineffective for failing to inform the sentencing court Trzaska did not attend court hearings because he was in the hospital, traveled to New York for his daughter's funeral, and had to hitchhike back to Nevada. Trzaska also asserted counsel failed to explain he had simply been seeking shelter when he was arrested in Utah for improperly entering a recreational vehicle during his trip back to Nevada. Trzaska failed to demonstrate his counsel's performance was deficient or resulting prejudice. A review of the record reveals this claim is belied by the record as counsel informed the sentencing court regarding these issues during several hearings. *See Hargrove v. State*, 100 Nev. 498,

502-03, 686 P.2d 222, 225 (1984). Therefore, we conclude the district court did not err in denying this claim.²


Fourth, Trzaska argued his counsel was ineffective for failing to ensure errors contained in the presentence investigation report (PSI) were corrected and for failing to obtain documents to demonstrate a criminal case from Iowa had been sealed. Trzaska failed to demonstrate counsel's performance was deficient or resulting prejudice. Trzaska's claim regarding failing to correct the PSI was belied by the record because counsel raised multiple arguments regarding errors in the PSI, which resulted in the creation of two supplemental PSIs. *See id.* In addition, Trzaska merely asserted counsel should have obtained documents regarding the Iowa criminal case, but he made only a bare claim regarding this issue and did not demonstrate counsel could have obtained such documents through reasonably diligent investigation. *See id.; Molina*, 120 Nev. at 192, 87 P.3d at 538. Therefore, we conclude the district court did not err in denying this claim.

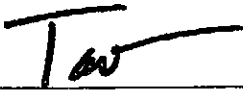
Next, Trzaska argues the district court erred in denying the petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations that are not belied by the record, and if true, would entitle him to relief. *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. The

²To the extent Trzaska asserted counsel was ineffective for failing to advise the sentencing court of these issues at an earlier time or seek a continuance based upon these issues so that a warrant would not have been issued for Trzaska's arrest when he failed to appear at the initial sentencing hearing, Trzaska failed to demonstrate a reasonable probability of a different outcome had counsel done so.

district court concluded Trzaska's claims did not meet that standard and the record before this court reveals the district court's conclusions in this regard were proper. Therefore, the district court properly denied the petition without conducting an evidentiary hearing.

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Valorie J. Vega, Senior District Judge
Gregory & Waldo
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk