

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAWRENCE HAROLD DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72078

FILED

APR 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Lawrence Harold Davis appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus and motion for modification of sentence.¹ Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

In his September 28, 2016, petition, Davis first claimed his counsel was ineffective. 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 a decision to enter a guilty plea, a petitioner must demonstrate a reasonable probability, but for counsel's

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

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).

Davis first appeared to claim his counsel was ineffective during the guilty plea proceedings for failing to file an unspecified motion and that failure legitimized an otherwise improper guilty plea. Davis also appears to assert counsel failed to inform the district court that Davis' mental health issues did not permit him to enter a valid guilty plea. Davis failed to demonstrate his counsel's performance was deficient or resulting prejudice. Davis did not support these claims with specific facts or otherwise explain what specific actions counsel should have undertaken. Bare claims, such as these, are insufficient to demonstrate a petitioner is entitled to relief. See *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Therefore, we conclude the district court did not err by denying these claims.²

Second, Davis appeared to claim his counsel was ineffective for advising him to plead guilty when he did not commit the crime. Davis failed to demonstrate his counsel's performance was deficient or resulting prejudice. In the written plea agreement, Davis asserted he discussed the charges, possible defenses, and circumstances that might be in his favor with his counsel, but concluded a guilty plea was in his best interest. At the

²Davis also appeared to assert he should be entitled to withdraw his guilty plea due to his mental health issues, but he failed to demonstrate withdrawal of his plea was necessary to correct a manifest injustice. See NRS 176.165.

plea canvass, Davis acknowledged he had discussed the charges with his counsel, counsel had answered his questions, and he believed it was in his best interest to enter a guilty plea. Given the record before this court, Davis failed to demonstrate his counsel acted below an objective standard of reasonableness or a reasonable probability he would have refused to plead guilty and insisted on going trial had counsel had additional discussions with Davis regarding entry of his plea or the facts of this case. Therefore, we conclude the district court did not err by denying this claim.

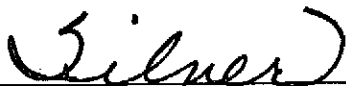
Third, Davis claimed his counsel was ineffective during his probation revocation hearing because counsel led the district court to believe he committed the alleged violation.³ Davis also claimed counsel failed to present evidence showing he did not commit the alleged violation. Davis failed to demonstrate his counsel's performance was deficient or resulting prejudice. Davis did not support his claim with factual assertions, and thus failed to demonstrate he is entitled to relief. *See Hargrove*, 100 Nev. at 502, 686 P.2d at 225. In addition, Davis attached the transcript of a probation revocation hearing for a different case without explaining how actions taken during that hearing had any bearing upon this matter. Accordingly, Davis failed to demonstrate his counsel's performance in this case was objectively unreasonable or a reasonable probability of a different


³The Nevada Supreme Court has recognized that an ineffective-assistance-of-counsel claim will lie only where the defendant had a constitutional or statutory right to the appointment of counsel. *See McKague v. Warden*, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996). Here, the district court apparently determined that Davis was entitled to the effective assistance of counsel because the district court addressed the merits of Davis' claims. *See Gagnon v. Scarpelli*, 411 U.S. 778, 790-91 (1973) (explaining when a defendant is entitled to counsel during probation revocation proceedings).

outcome at the probation revocation hearing in this case had counsel performed differently. Therefore, we conclude the district court did not err by denying this claim.

Next, in his October 5, 2016, motion for modification of sentence, Davis requested the district court to amend his sentence to be his time already served because the victim only suffered scratches on her arm. Davis' claim fell outside the narrow scope of claims permissible in a motion to modify sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merit of Davis' claim, we conclude the district court did not err by denying the motion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Silver


_____, J.
Gibbons

cc: Hon. Eric Johnson, District Judge
Lawrence Harold Davis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴The Honorable Jerome T. Tao did not participate in the decision in this matter.