

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ISRAEL GARCIA-BORJA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71173

FILED

FEB 13 2018

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

ORDER OF AFFIRMANCE

Israel Garcia-Borja appeals from an order of the district court denying his June 6, 2014, postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Garcia-Borja contends the district court erred by denying his claim 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, 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 v. Washington*, 466 U.S. 668, 697 (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). For purposes of the deficiency prong, counsel is strongly presumed to have provided adequate assistance. *Strickland*, 466 U.S. at 690. We give deference to the district court's factual findings that

are supported by substantial evidence and not clearly wrong 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).


Garcia-Borja argued counsel was ineffective for failing to explain the full range of minimum sentences Garcia-Borja could be subjected to as a result of his guilty plea. Both counsel and Garcia-Borja testified at the evidentiary hearing on the petition. The district court found counsel explained to Garcia-Borja the full range of minimum sentences he could face, which included the implications of the so-called "40% rule." For Garcia-Borja, that meant he could face a minimum sentence of up to eight years for each count. See NRS 193.130(1) ("The minimum term of imprisonment that may be imposed must not exceed 40 percent of the maximum term imposed."); NRS 193.330(1)(a)(1); NRS 201.230(2). The district court also found Garcia-Borja's conflicting testimony was not credible. "On matters of credibility this court will not reverse a trial court's finding absent a clear showing that the court reached the wrong conclusion." *Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990), *abrogated on other grounds by Harte v. State*, 116 Nev. 1054, 13 P.3d 420 (2000).


In support of his argument, Garcia-Borja points to imprecise language in the guilty plea memorandum and canvass suggesting he would be sentenced to terms of 2 to 20 years. However, looking to the record as a whole, reversal is not mandated. Counsel stated at the guilty plea hearing that Garcia-Borja understood each offense carried "a potential sentence of no less than two nor more than 20 years," indicating the minimum sentence could be higher than two years. Further, the record reveals that, two weeks prior to his guilty plea, Garcia-Borja knew he could receive a minimum sentence of up to 8 years on each count and the State would not stipulate to

2-year minimum sentences. The parties' compromise on the minimum-sentence issue appears to be reflected in the executed plea agreement: there would be no stipulated minimum sentence and the parties would be free to argue. In light of this record, Garcia-Borja has not made a clear showing the district court reached the wrong conclusion. We therefore cannot conclude the district court erred by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk