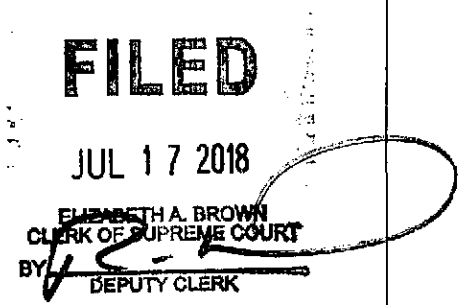
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAURICE HIAWATHA THOMAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72980



ORDER OF AFFIRMANCE

Maurice Hiawatha Thomas appeals from a district court order dismissing the postconviction petition for a writ of habeas corpus filed on April 1, 2016, and the supplemental petition filed on January 11, 2017. Second Judicial District Court, Washoe County; Janet J. Berry, Senior Judge.

Thomas claims his guilty plea was not knowingly, intelligently, and voluntarily entered because he was deprived of effective assistance of counsel. Thomas argues that defense counsel was ineffective for failing to advise him that "he could have raised a potentially meritorious motion to suppress the narcotic evidence found in the search of the vehicle he was driving." And Thomas asserts the district court erred by dismissing his petition without an evidentiary hearing.

After sentencing, a district court may permit a petitioner to withdraw a guilty plea were necessary "[t]o correct manifest injustice." NRS 176.165. "A guilty plea entered on [the] advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel." *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008).

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To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show (1) counsel's performance was deficient in that it fell below an objective standard of reasonableness and (2) a reasonable probability, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). We review the district court's resolution of ineffective-assistance claims de novo, giving deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

A petitioner is entitled to an evidentiary hearing only if he has asserted specific factual allegations that are not belied or repelled by the record and, if true, would entitle him to relief. *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." *Mann v. State*, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). We review a district court's determination that a petitioner is not entitled to an evidentiary hearing for abuse of discretion. *Berry v. State*, 131 Nev. 957, 969, 363 P.3d 1148, 1156 (2015).

The district court reviewed the pleadings and record in this case and found that Thomas "alleged only 'bare' and 'naked' claims that [defense counsel] was ineffective and that he was prejudiced as a result." This finding is supported by the record and is not clearly wrong. We note the record, as it existed at the time of Thomas' claims, indicates he consented to the search of the car he was driving and consequently a motion to

suppress evidence would have been futile. *See Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (holding counsel cannot be deemed ineffective for failing to make a futile motion); *State v. Burkholder*, 112 Nev. 535, 539, 915 P.2d 886, 888 (1996) (holding a search based on voluntary consent is lawful).

We conclude Thomas' ineffective-assistance-of-counsel claim regarding a potentially meritorious suppression issue is repelled by the record and the district court did not abuse its discretion by dismissing his petition and supplemental petition without conducting an evidentiary hearing.[1] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

[1]Although Thomas does not appear to challenge the district court's denial of his claims that counsel was ineffective for failing to (1) file a notice of an appeal and advise him of his right to appeal, (2) make any objections, (3) investigate important matters, and (4) present a defense, we conclude there was no error. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (a petitioner is not entitled to postconviction relief if his claims are bare or belied by the record).

cc: Chief Judge, Second Judicial District Court
Hon. Janet J. Berry, Senior Judge
Law Offices of Lyn E. Beggs, PLLC
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk