

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIO THOMAS MENDONCA,
Appellant,
vs.
ISIDRO BACA, WARDEN, NNCC,
Respondent.

No. 76997-COA

FILED

APR 29 2019

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

ORDER OF AFFIRMANCE

Mario Thomas Mendonca appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

First, Mendonca argues the district court erred by denying his claims of ineffective assistance of counsel raised in his July 12, 2017, petition and later-filed 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*). 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 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).


Mendonca claimed his counsel was ineffective at sentencing because counsel was not adequately prepared, failed to appropriately cross-examine the witnesses, and failed to present sufficient mitigation witnesses. The district court conducted an evidentiary hearing and found Mendonca failed to demonstrate he was prejudiced. The district court found Mendonca's sentence was not based upon any of the issues raised in his petition or at the evidentiary hearing. Rather, the district court found Mendonca's sentence was based upon his violent tendencies, his significant history of substance abuse and the danger he poses while under the influence of those substances, and the need for Mendonca to undergo a long period of sobriety while incarcerated. The district court further found the additional mitigation witnesses Mendonca could have called to testify at the sentencing hearing would only have provided the same type of information that was already presented at that hearing. Based on these findings, the district court concluded Mendonca failed to demonstrate a reasonable probability of a different outcome at sentencing had counsel performed different actions. Substantial evidence supports the district court's findings. Therefore, we conclude the district court did not err by denying this claim.

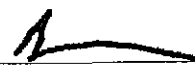
Second, Mendonca argues the district court erred by denying a claim raised in his pro se petition without considering it at the evidentiary hearing. In his pro se petition, Mendonca claimed his constitutional right to a knowing and voluntary guilty plea had been violated because the district court failed to follow the guilty plea agreement when it imposed a lengthier sentence than Mendonca believed he had agreed to. The district

court denied this claim without considering it at the evidentiary hearing because the record demonstrated it lacked merit. *See Mann v. State*, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002) (explaining that a district court need not conduct an evidentiary hearing concerning a claim that is proven to be false by the record that existed when the claim was made). The record revealed Mendonca was informed in the written plea agreement and at the plea canvass of the potential penalties he faced and that his ultimate sentence would be decided by the district court. The record further revealed that Mendonca acknowledged at the plea canvass that his guilty plea was not contingent upon a specific sentence. As the record demonstrated Mendonca's claim lacked merit, the district court properly denied it without considering it at the evidentiary hearing.¹ *See id.*

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹Mendonca also argues the district erred by dismissing this claim prior to appointing postconviction counsel. However, this claim did not present difficult issues, Mendonca did not demonstrate he was unable to comprehend the proceedings, and counsel was not necessary to proceed with discovery for this issue. Therefore, we conclude the district court did not abuse its discretion by dismissing this claim prior to the appointment of postconviction counsel. *See NRS 34.750(1); Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760-61 (2017).

cc: Hon. Lynne K. Simons, District Judge
Troy Curtis Jordan
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk