

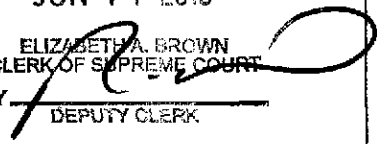
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 75811-COA

**FILED**

JUN 11 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Seth E. Trzasca appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 24, 2015, and a supplemental petition for a writ of habeas corpus filed on April 28, 2016. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

First, Trzasca claims the district court erred by denying his ineffective-assistance-of-counsel claim. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate his 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, 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). We give deference to the 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).

Trzasca claimed counsel was ineffective for failing to inform the district court as to why Trzasca failed to appear for his sentencing hearing on December 16, 2013. He claimed that had counsel explained his absence, the district court would not have issued a bench warrant and the district court would have followed the negotiations of the parties. Trzasca failed to demonstrate counsel was deficient or resulting prejudice. At the time of the December 16 hearing, Trzasca failed to appear for sentencing and a bench warrant had already been issued in another case for his failure to appear.<sup>1</sup> Trzasca failed to demonstrate informing the district court regarding the circumstances of his failure to appear would have caused the district court to not issue a bench warrant.

To the extent Trzasca claimed the district court would have followed the negotiations found in the plea agreement had counsel explained why Trzasca did not appear for his sentencing hearing, Trzasca failed to demonstrate counsel was deficient or resulting prejudice. Counsel fully informed the district court regarding why Trzasca failed to appear

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<sup>1</sup>To the extent Trzasca challenged the events in the other case, these claims were not properly raised in the postconviction petition for a writ of habeas corpus challenging his conviction in district court case number C290065.

during the sentencing hearing held on January 12, 2015. Further, Trzasca committed a new crime in Utah, and had already triggered the portion of the plea agreement that allowed the State to argue for any lawful sentence. Counsel also argued at sentencing to mitigate the new convictions from Utah. The district court heard these arguments, found the State regained its right to argue, and imposed the small habitual criminal enhancement. Trzasca failed to demonstrate that had counsel made these arguments when Trzasca failed to appear at the December 16, 2013, hearing, the district court would have followed the original negotiations of the parties when sentencing him on January 12, 2015. Therefore, we conclude the district court did not err by denying this claim.

Next, Trzasca claims the district court erred by denying his claim that his plea was not knowingly and voluntarily entered. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); *see also Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. *Hubbard*, 110 Nev. at 675, 877 P.2d at 521. In determining the validity of a guilty plea, this court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); *Bryant*, 102 Nev. at 271, 721 P.2d at 367.

First, Trzasca claimed counsel failed to communicate with him regarding his case, his potential defenses, and the plea agreement. The district court held an evidentiary hearing on this issue. At the evidentiary


hearing, counsel testified he discussed the evidence with Trzasca, the potential penalties he faced, and the plea agreement. The district court found counsel was credible and Trzasca was not. Further, the district court found Trzasca acknowledged at the plea canvass that he read and understood all of the terms of the plea agreement, he discussed his case and his rights with counsel, and he had no questions about the negotiations. Further, by signing the plea agreement, Trzasca acknowledged counsel had discussed with him the possible defenses and answered all of his questions. Substantial evidence supports the decision of the district court, and we conclude the district court did not err by denying this claim.


Second, Trzasca claimed counsel failed to investigate his case and potential defenses. Trzasca failed to demonstrate counsel was deficient or resulting prejudice. Trzasca was given the opportunity at the evidentiary hearing to question counsel regarding any failure to investigate, and failed to do so. Further, Trzasca failed to demonstrate what an investigation concerning the case or defenses would have revealed. *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 show how a better investigation would have made a more favorable outcome probable). Therefore, we conclude the district court did not err by denying this claim.

Finally, Trzasca claimed counsel coerced him into pleading guilty. This claim was raised in Trzasca's presentence motion to withdraw a guilty plea and could have been raised on direct appeal; therefore, this claim was waived. *See Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("[C]laims that are appropriate for a direct appeal must be

pursued on direct appeal, or they will be considered waived in subsequent proceedings.”), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999). Accordingly, we conclude the district court did not err by denying this claim.

Having concluded Trzasca is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Carolyn Ellsworth, District Judge  
Gregory & Waldo, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>To the extent the State asks this court to sanction counsel for failing to cite to the record, we conclude the State failed to demonstrate counsel failed to cite to the record such that sanctions should be imposed. While counsel did not cite to the record in her argument section, she did cite to the record in the introduction and procedural history portion of the brief.