

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GUILLERMO A. PADILLA-MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69442

FILED

NOV 18 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus and a supplemental postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant Guillermo A. Padilla-Martinez claims the district court erred by denying his claims that his plea was coerced and not knowingly entered, his counsel was ineffective at sentencing, and his counsel was ineffective for failing to file a direct appeal. We disagree.

When reviewing the denial of a postconviction petition for a writ of habeas corpus, 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). 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 sufficient to invalidate the decision to enter a guilty plea, a petitioner must demonstrate 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 deficiency and prejudice must be shown. *Strickland*, 466 U.S. at 697.

Padilla-Martinez claimed his counsel was ineffective because counsel coerced him into entering his plea. The district court conducted an evidentiary hearing on this claim. The district court found Padilla-Martinez assured the court at the plea canvass that his plea was not the result of threats and Padilla-Martinez also indicated during the plea canvass that he understood the plea memorandum, which indicated he was satisfied with counsel and his plea was voluntary and not the result of coercion. The district court also found counsel testified credibly that he discussed the plea negotiations at length with Padilla-Martinez, he never coerced Padilla-Martinez into entering a guilty plea, and he had no indication that Padilla-Martinez did not understand the terms of the plea or that his plea was in any way involuntary. The district court concluded Padilla-Martinez's guilty plea was not the product of coercion. The district court's findings are supported by the record and we conclude the district court did not err by denying this claim. *See Molina v. State*, 120 Nev. 185, 190-191, 87 P.3d 533, 537-538 (2004).

Padilla-Martinez also claimed his counsel was ineffective for failing to adequately review the discovery with him so he understood the possible defenses to the charges and he asserted that had counsel discussed a possible conviction for manslaughter he would have proceeded

to trial.¹ The district court determined Padilla-Martinez failed to demonstrate his counsel was deficient because he did not explain why he believed the facts in this case would have made manslaughter relevant and he did not cite any authority for the proposition that a person charged with murder had a constitutional right to have the elements of all lesser homicides explained to him. We conclude the district court did not err by denying this claim without conducting an evidentiary hearing. See *Hargrove v. State*, 100 Nev. 498, 502-503, 686 P.2d 222, 225 (1984).

Padilla-Martinez next claimed his counsel was ineffective at sentencing for failing to present an expert opinion on the question of whether he was subject to being rehabilitated, whether he presented a future danger to the community, and whether something short of a lengthy sentence for the weapon enhancement would have been appropriate in this case. He also claimed his counsel was ineffective for failing to object to the sentence for the weapon enhancement or seek clarification of why that sentence was so extreme. The district court determined that hiring an expert for the purposes identified by Padilla-Martinez was not necessary because the court must weigh each of those considerations in every sentencing hearing. The district court also found the record demonstrated that the court had considered the factors required by NRS 193.165 when imposing the sentence for the weapon enhancement. Padilla-Martinez failed to demonstrate that any objection to the sentence for the weapon enhancement would have resulted in a

¹On appeal, Padilla-Martinez now also claims his counsel was ineffective for failing to inform him of the defenses of self-defense and voluntary intoxication. These claims are improperly raised for the first time on appeal and we decline to consider them. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).


different outcome, and we conclude the district court did not err by denying these claims without conducting an evidentiary hearing. *See id.*

Lastly, Padilla-Martinez claimed his counsel was ineffective for failing to file a direct appeal. The district court conducted an evidentiary hearing on this claim. Padilla-Martinez testified generally that he wanted to appeal his conviction and he conveyed this desire to his counsel, but he was unclear about when he conveyed that desire to his counsel. Counsel testified that Padilla-Martinez never told counsel he wanted to appeal his conviction and if Padilla-Martinez had so informed counsel, counsel would have filed a notice of appeal. The district court found counsel's testimony to be highly credible and determined that Padilla-Martinez did not communicate his desire to appeal to his counsel and the totality of the circumstances would not have alerted his counsel that an appeal should be pursued. The district court's findings are supported by the record and we conclude the district court did not err in denying this claim. *See Toston v State*, 127 Nev. 971, 978-980, 267 P.3d 795, 800-801 (2011).

We conclude the district court did not err by denying Padilla-Martinez's postconviction petition for a writ of habeas corpus and his supplemental petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Connie J. Steinheimer, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk