

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIBERTO GALDAMEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77277-COA

FILED

OCT 15 2019

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

ORDER OF AFFIRMANCE

Eriberto Galdamez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 22, 2016, and various supplemental pleadings. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Galdamez contends the district court erred by denying his claim that his plea was not knowingly and intelligently entered. After sentencing, a district court may permit a petitioner to withdraw his guilty plea where necessary “[t]o correct manifest injustice.” NRS 176.165. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). 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). We review claims of manifest injustice for abuse of discretion. *See Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1229 (2008).

Galdamez argued his plea was invalid because he did not realize he was waiving his right to a direct appeal and he would not have knowingly done so because he would have wanted to appeal if he did not get

the sentence he was requesting. Galdamez' guilty plea agreement explicitly stated he was waiving his direct appeal, and he was provided a copy of the plea agreement in his native language. Although he was not questioned about waiving this particular right at his canvass, he did acknowledge that he read the entire plea agreement and did not have any questions. The totality of the circumstances demonstrates Galdamez understood the consequences of his plea, and he did not meet his burden of demonstrating his plea was invalid. We therefore conclude the district court did not err by denying this claim.

Galdamez also contends the district court erred by denying his claim that counsel was ineffective at sentencing. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *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.

Galdamez argued counsel failed to make a zealous argument in favor of his desired sentence of two to five years in prison. A petitioner must allege specific facts that, if true and not belied by the record, would entitle him to relief. *Cf. Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Galdamez' bare claim failed to state what additional argument counsel could or should have made. Further, Galdamez failed to demonstrate how any additional argument would have resulted in a more favorable outcome at sentencing. We note that Galdamez' argument failed to account for the mitigating evidence counsel argued at sentencing and

that the State had strongly urged a sentence twice as long as what was imposed. Galdamez failed to demonstrate deficiency or prejudice. We therefore conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Benjamin Durham Law Firm
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk