

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDWARD TURNER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78234-COA

**FILED**

JAN 14 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING*

Edward Turner appeals from orders of the district court denying two postconviction petitions for a writ of habeas corpus and a motion to withdraw guilty plea. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge, and Linda Marie Bell, Chief Judge.

*District Court Case Nos. A-18-783942-W and C-15-306942-2<sup>1</sup>*

Turner filed a postconviction petition for a writ of habeas corpus on November 2, 2018 and the petition was filed in district court case number A-18-783942-W. Turner also filed a motion to withdraw guilty plea on November 29, 2018 and the motion was filed in district court case number C-15-306942-2. Both pleadings raised similar claims of ineffective assistance of counsel, the district court addressed both pleadings at a February 19, 2019, hearing, and the district court denied both pleadings in the same order. Upon review of the record, it appears the district court

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<sup>1</sup>The Hon. Jerry A. Wiese presided over the proceedings in these cases.

treated the motion to withdraw guilty plea as a supplement to the petition. Given the record and the nature of the claims raised, we conclude the district court did not abuse its discretion by treating the motion to withdraw guilty plea as a supplement to the petition. See NRS 34.750(5); *State v. Powell*, 122 Nev. 751,758, 138 P.3d 453, 457-58 (2006) (explaining that the district court has broad authority to allow supplemental pleadings in postconviction matters); see also *Harris v. State*, 130 Nev. 435, 448-49, 329 P.3d 619, 628 (2014) (explaining that a postconviction petition for a writ of habeas corpus is the exclusive remedy to challenge the validity of a guilty plea after sentencing).

In his petition and motion, Turner claimed his counsel was ineffective. 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). Moreover, a petitioner is entitled to an evidentiary hearing if he raises specific claims that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Turner argued his counsel was ineffective for coercing him into pleading guilty by offering incompetent advice. Turner also contended that, after he witnessed counsel's performance during the

beginning of the trial, he was forced to enter a guilty plea due to counsel's failure to appropriately challenge the State's evidence. However, Turner acknowledged in the written plea agreement that he and counsel discussed defense strategies and circumstances which might have been in his favor, and as a result, concluded accepting the plea bargain was in his best interest. Turner further acknowledged that he accepted the plea agreement voluntarily and did not act under duress or coercion. Given the acknowledgments Turner made in the written plea agreement, Turner failed to demonstrate his counsel coerced him into pleading guilty or a reasonable probability he would have refused to plead guilty and would have insisted on continuing the trial proceedings had counsel offered different advice. Therefore, the district court did not err by denying this claim.

Second, Turner argued his counsel was ineffective because he failed to seek dismissal of the charges against him after the victims could not identify him as a perpetrator of the crimes. The record reveals Turner was discovered in a vehicle that matched the description of the one that carried the persons that had committed the crimes and items belonging to the victims were discovered in the vehicle. The record further reveals that Turner confessed to a detective that he had participated in the commission of the crimes. Based upon the record, Turner did not demonstrate it was objectively unreasonable for counsel to fail to move for dismissal based upon the victims' inability to identify him, even if such a motion were permitted. Further, he did not demonstrate a reasonable probability he would have declined to plead guilty and insisted upon continuing the trial had counsel

moved for dismissal upon this basis. Therefore, the district court did not err by denying this claim.

Third, Turner argued his counsel was ineffective for failing to provide him with discovery materials obtained from the State. Turner did not identify any discovery or evidence counsel should have provided to him. Turner's unsupported claim was insufficient to demonstrate that his counsel's performance was deficient or a reasonable probability he would have declined to plead guilty and insisted upon continuing the trial. *See id.* Therefore, the district court did not err by denying this claim.

Fourth, Turner argued his counsel was ineffective for permitting the State to withhold exculpatory evidence. Turner did not identify the exculpatory evidence that was withheld by the State. Turner's unsupported claim was insufficient to demonstrate that his counsel's performance was deficient or a reasonable probability he would have declined to plead guilty and insisted upon continuing the trial. *See id.* Therefore, the district court did not err by denying this claim.

Fifth, Turner argued his counsel was ineffective for failing to file pretrial motions concerning the line-up, crime surveillance video, and witnesses' statements. Turner did not explain what challenges or motions counsel should have made concerning these pieces of evidence. Turner's unsupported claim was insufficient to demonstrate that his counsel's performance was deficient or a reasonable probability he would have declined to plead guilty and insisted upon continuing the trial. *See id.* Therefore, the district court did not err by denying this claim.

Sixth, Turner contended he asked his counsel to pursue a direct appeal, but his counsel instead filed a motion for reconsideration of

sentence. “[C]ounsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction.” *Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011). Moreover, “prejudice is presumed” when counsel “fails to file a direct appeal after a defendant has requested or expressed a desire for a direct appeal.” *Hathaway v. State*, 119 Nev. 248, 254, 71 P.3d 503, 507 (2003). Turner’s allegation that he requested his counsel to pursue a direct appeal and counsel subsequently did not pursue a direct appeal, if true, would entitle Turner to relief. In addition, Turner’s claim was not belied by the record. Therefore, an evidentiary hearing is necessary to ascertain whether the discussion occurred as Turner alleged. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, we reverse the district court’s denial of this claim and remand for an evidentiary hearing concerning this issue.

*District Court Case No. A-18-773974-W<sup>2</sup>*


In his May 4, 2018, petition, Turner claimed the Nevada Department of Corrections (NDOC) improperly declined to apply his statutory credits toward his parole eligibility date. The district court found Turner was serving an aggregated term for category B felonies he committed after the effective date of NRS 209.4465(8). For those reasons, the district court found NDOC had properly only applied Turner’s credits toward his maximum term. The record supports these factual findings, and the district court did not err by denying this claim. Accordingly, we

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<sup>2</sup>The Hon. Linda Marie Bell presided over the proceedings concerning this case.

ORDER the judgments of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

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

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

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

cc: Hon. Linda Marie Bell, Chief Judge  
Hon. Jerry A. Wiese, District Judge  
Edward Turner  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk