

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO PEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78635-COA

FILED

JAN 24 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Antonio Perez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 2, 2019. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Perez contends the district court erred by denying his claims that he received ineffective assistance from trial-level counsel. To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability 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). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations 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).

In his petition below, Perez claimed counsel should have filed a motion for bail reduction and visited him more often while he was in jail. Perez also claimed counsel failed to cross-examine or challenge the witnesses or victim in this case and withheld important evidence that was needed for Perez' defense. Perez failed to specify what the results of a motion for bail reduction or more frequent visits would have been. He also failed to specify what the result of any cross-examination or challenge to witnesses would have been¹ or what evidence was withheld. Finally, Perez failed to specify how any of the alleged deficiencies affected his decision to plead guilty. We therefore conclude the district court did not err by denying these claims without first conducting an evidentiary hearing.

In his informal brief, Perez raises several additional claims of ineffective assistance of counsel. He claims counsel suffered from a conflict of interest, failed to file a motion for a psychological assessment, failed to conduct pretrial investigation, should not have waived his preliminary hearing, and failed to file an appeal. Because these are new claims not raised below, we decline to consider them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).


Perez also claims the district court erred by denying his request for the appointment of postconviction counsel. The district court found Perez' claims were easily disposed of as a matter of law and counsel would not have meaningfully assisted the court in deciding the petition. This finding is supported by the record on appeal. Further, the issues Perez presented were not difficult, and it does not appear counsel was necessary to proceed with any discovery. We therefore conclude the district court did

¹We note Perez was charged by way of indictment.

not abuse its discretion by denying Perez' motion for the appointment of postconviction counsel. *See* NRS 34.750(1); *see generally* *Renteria-Novoa v. State*, 133 Nev. 75, 391 P.3d 760 (2017). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Eric Johnson, District Judge
Antonio Perez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk