

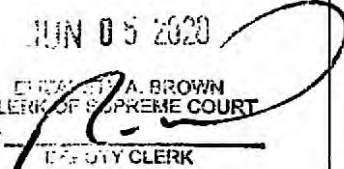
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON SIMPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78808-COA

FILED

JUN 05 2020

ERIN A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jason Simpson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Linda Marie Bell, Chief Judge.

Simpson argues the district court erred by denying the claim of ineffective assistance of counsel he raised in his March 28, 2018, petition and later-filed supplement. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on an *Alford*¹ 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, 987-88, 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

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).

law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

Simpson claimed his counsel was ineffective for causing him to enter an unknowing and involuntary plea. Simpson contended counsel made incorrect representations concerning a surveillance video recording and those misrepresentations caused him to enter his plea without properly understanding the evidence. Simpson asserted that, due to counsel's errors, he should have been permitted to withdraw his plea.


At the evidentiary hearing, Simpson's counsel testified that she and Simpson watched the surveillance video recording together prior to entry of his plea. Counsel also testified that she investigated this case and reviewed the evidence with Simpson. She noted that the evidence against Simpson included his statement to police in which he admitted to shooting a firearm. Counsel further testified that she explained the State's plea offer and recommended he accept the offer because it would allow him to avoid a sentence under the large habitual criminal enhancement. Counsel's investigator also testified that Simpson watched the surveillance video recording prior to his acceptance of the plea offer.


The district court found the testimony presented at the evidentiary hearing demonstrated Simpson watched the surveillance video recording prior to entry of his plea. The district court found counsel did not misrepresent the nature of the surveillance video recording. The district court also found Simpson failed to demonstrate he entered an unknowing and involuntary plea.

Substantial evidence supports the district court's findings. And we conclude the district court did not err by determining Simpson failed to demonstrate his counsel was ineffective. Moreover, Simpson failed to

demonstrate withdrawal of his plea was necessary to correct a manifest injustice. See NRS 176.165. Accordingly, we conclude the district court did not err by denying the petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk