

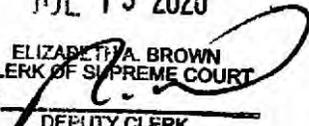
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AGUSTIN BARANDA, A/K/A  
AUGUSTIN VIDAL BARANDA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78938-COA

**FILED**

JUL 13 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Agustin Baranda appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on December 7, 2016, and the supplemental petition for a writ of habeas corpus filed on March 19, 2018. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge.

Baranda claims the district court erred by denying his petition because trial counsel was ineffective. To prevail on a claim of ineffective assistance of trial counsel, a petitioner must demonstrate counsel's performance was deficient because it fell below an objective standard of reasonableness, and resulting prejudice in 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 (1984).

The petitioner must show both components of the ineffective-assistance inquiry—deficiency and prejudice, *id.* at 697, and the petitioner must demonstrate the underlying facts of his claim by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings regarding ineffective assistance of counsel if they are supported by substantial

evidence and not clearly wrong but review the district court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

In his petition, Baranda claimed that defense counsel was ineffective for failing to inform him of the nature of the charges and the direct consequences of the guilty plea. He argued that counsel did not explain the difference between the charges of sexual assault and lewdness, how the sentencing ranges for each offense could be applied to his sentence, and that the sentences could run concurrently or consecutively. And he asserted that counsel coerced his plea by telling him that he would spend the rest of his life in prison if he went to trial.

The district court conducted an evidentiary hearing and made the following findings. Baranda acknowledged in his petition that counsel had advised him about sentencing and the district court had canvassed him about his decision to plead guilty. The testimony adduced during the evidentiary hearing showed that counsel explained the possible ranges of sentences Baranda would face by accepting the State's plea offer, and counsel explained the possible outcome Baranda would face by proceeding to trial on the original charges. Baranda was not coerced into entering his guilty plea. And Baranda did not show that counsel's performance was deficient.

We conclude the district court's findings are supported by the record and are not clearly wrong, Baranda failed to meet his burden to demonstrate that counsel was ineffective, and the district court did not err by rejecting this claim. *See Whitman v. Warden*, 90 Nev. 434, 436, 529 P.2d 792, 793 (1974) ("A guilty plea is not coerced merely because motivated by a desire to avoid the possibility of a higher penalty.").

Baranda also claimed that defense counsel was ineffective for misleading him about the evidence.<sup>1</sup> He argued that counsel led him to believe that the State had inculpatory evidence consisting of photographs and text messages that would be used at trial to prove his guilt. And he asserted that he would have insisted on going to trial if he had known that the State did not have this evidence. The district court found that Baranda's claim was supported only by his testimony, Baranda's testimony was not credible, and there was no credible evidence proving that defense counsel misrepresented the evidence. We conclude the district court's findings are supported by the record and are not clearly wrong, Baranda failed to meet his burden to demonstrate that counsel was ineffective, and the district court did not err by rejecting this claim.

Having concluded Baranda is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

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

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

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

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<sup>1</sup>To the extent Baranda claimed that defense counsel misled him about the collateral consequences of his guilty plea, we conclude this claim was a bare allegation and he was not entitled to relief. *Cf. Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

cc: Hon. Joseph T. Bonaventure, Senior Judge  
Gaffney Law  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk