

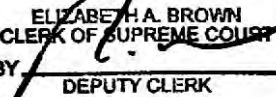
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PETER MARK COCA,
Appellant,
vs.
JAMES DZURENDA, DIRECTOR
NEVADA DEPARTMENT OF
CORRECTIONS,
Respondent.

No. 77913-COA

FILED

JUL 13 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Peter Mark Coca appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Fourth Judicial District Court, Elko County; Charles M. McGee, Senior Judge.

Coca argues the district court erred by denying the claims of ineffective assistance of counsel he raised in his January 23, 2015, petition and later-filed supplement. 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). To warrant an evidentiary hearing, 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).


First, Coca claimed his counsel was ineffective for failing to pursue an insanity defense based upon his use of prescription testosterone. Coca appeared to assert he was unaware of this potential defense and would not have entered a guilty plea if such a defense had been pursued. Coca's claim was belied by the record. At the plea canvass, Coca specifically stated he was aware that his counsel had explored an insanity defense based upon his use of testosterone, his mental health had been evaluated on multiple occasions, he understood entry of a guilty plea waived an insanity defense, and he wished to enter a guilty plea. Given Coca's statements during the plea canvass, Coca failed to demonstrate his counsel's performance was deficient or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel further pursued this defense. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Coca claimed his counsel was ineffective for failing to pursue a defense-of-others defense or retain ballistics experts. Coca did not explain how counsel's failure to perform these actions affected his decision to enter a guilty plea, and thus, he did not demonstrate a reasonable probability, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Moreover, at the plea canvass Coca specifically acknowledged that he waived a defense-of-others defense by entry of his plea and still wished to enter a guilty plea despite that waiver. In addition, in the written plea agreement, Coca acknowledged he had discussed possible defenses and circumstances that might be in his favor with his counsel, and wished to enter a guilty plea. Therefore, Coca failed

to demonstrate his counsel's performance fell below an objective standard of reasonableness. We conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Having concluded Coca is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Charles M. McGee, Senior Judge
Anthony L. Abbatangelo
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk

¹The district court found that Coca's petition was untimely filed because it was not filed within one year of entry of Coca's judgment of conviction. See NRS 34.726(1). However, the Nevada Supreme Court's order granting Coca's request to voluntarily dismiss his direct appeal informed Coca that the one-year filing deadline for a postconviction petition for a writ of habeas corpus commenced from the date of its order. *Coca v. State*, Docket No. 62455 (Order Dismissing Appeal, March 6, 2014). Thus, Coca had until March 6, 2015, to timely file his petition. Because Coca filed his petition on January 25, 2015, his petition was timely filed. Therefore, the district court erred by finding Coca's petition was untimely. Nevertheless, because the district court properly denied relief, we affirm. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 391 (1970).

We deny Coca's request for oral argument.