

JIN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHAN ROSS MONCADA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80126-COA

FILED

JAN 08 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

JONATHAN ROSS MONCADA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80127-COA ✓

ORDER OF AFFIRMANCE

Jonathan Ross Moncada appeals from identical orders denying postconviction petitions for a writ of habeas corpus filed in district court case number PC7914 (Docket No. 80126) and district court case number PC7920 (Docket No. 80127). Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Moncada argues the district court erred by denying claims of ineffective assistance of counsel raised in his October 11, 2016, petitions and later-filed supplements. To demonstrate ineffective assistance of trial-level 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 687-88 (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 law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

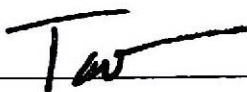
Moncada argued his counsel was ineffective for failing to inform him of the range of punishments he faced under the habitual criminal enhancement. The district court conducted an evidentiary hearing concerning this issue and Moncada's trial-level counsel testified at that hearing. Counsel testified that he reviewed the guilty plea agreements and the failure-to-appear (FTA) clauses with Moncada. Counsel testified he explained to Moncada that if he violated the FTA clauses, he could be sentenced pursuant to the habitual criminal enhancement. Counsel stated he explained the potential sentences Moncada faced if he were to be sentenced pursuant to the habitual criminal enhancement.

The district court found that counsel's testimony was credible and that counsel appropriately informed Moncada of the range of punishments he faced if he were to be sentenced pursuant to the habitual criminal enhancement. Substantial evidence supports the district court's findings, and this court will not "evaluate the credibility of witnesses because that is the responsibility of the trier of fact," *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). Accordingly, Moncada failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. Moncada also failed to demonstrate a reasonable probability he would not have pleaded guilty and would have insisted on proceeding to trial had counsel explained the habitual criminal

enhancement in a different manner. Therefore, we conclude the district court did not err by denying these claims, and we

ORDER the judgments of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Robert W. Lane, District Judge
David H. Neely, III
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk