

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PAUL JAY MOON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81818-COA

FILED

JUL 12 2021

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

ORDER OF AFFIRMANCE

Paul Jay Moon appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Ineffective assistance of counsel

In his March 17, 2020, petition, Moon claimed his trial-level counsel was ineffective. To demonstrate ineffective assistance of defense 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 (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).

First, Moon claimed his trial-level counsel was ineffective for improperly persuading him to accept a plea offer even though the State did not possess strong evidence of his guilt. Moon also contended counsel tricked him into believing he would be placed on probation.

The State originally charged Moon with making threats or conveying false information concerning an act of terrorism, a category B felony. *See* NRS 202.448(2). Due to Moon's acceptance of the plea offer, the State reduced his charge to intimidating a public officer, a category C felony, *see* NRS 199.300(3)(a)(1), and agreed not to oppose probation. In the written plea agreement, Moon acknowledged that he understood the nature of the charge against him, discussed possible defenses and defense strategies with his counsel, and concluded that accepting the plea bargain and pleading guilty were in his best interests. Moon also acknowledged in the written plea agreement and at the plea canvass that he understood that a sentence of probation was within the discretion of the district court and that no one had promised or guaranteed he would receive a particular sentence. At the plea canvass, Moon acknowledged that he read and understood the written plea agreement, he discussed the case with his counsel, and wished to enter a guilty plea.

In light of Moon's acknowledgments in the written plea agreement and at the plea canvass, Moon failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. In addition, due to the benefit Moon received by entry of his plea, and the acknowledgments he made in the written plea agreement and at the plea canvass, Moon did not demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel discussed the plea agreement or possibility of probation with him in a different manner. Therefore, we conclude the district court did not err by denying this claim.

Second, Moon appeared to claim his trial-level counsel was ineffective because she may have improperly communicated with the State prior to the sentencing hearing. Moon contended that shortly before the sentencing hearing, he noticed the prosecutor received a text message and he believed the message may have been sent by his counsel. Moon did not support this claim with specific factual assertions that were sufficient to show that his counsel's performance fell below an objective standard of reasonableness or a reasonable probability there would have been a different outcome at the sentencing hearing had counsel performed different actions. Therefore, we conclude the district court did not err by denying this claim.

Validity of the guilty plea

Next, Moon claimed he should be permitted to withdraw his guilty plea because he suffered from temporary insanity when he entered his guilty plea due to the failure of the Las Vegas Metropolitan Police Department to investigate a traffic accident. "This court will not invalidate a plea as long as the totality of the circumstances, as shown by the record, demonstrates that the plea was knowingly and voluntarily made and that the defendant understood the nature of the offense and the consequences of the plea." *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). In the written plea agreement, Moon acknowledged that he understood the charges against him, discussed the case with his counsel, and voluntarily wished to accept the plea offer. At the plea canvass, Moon asserted that he understood the proceedings and the charge against him, he responded appropriately to the questions posed to him, and he gave no indication there were any issues that affected his ability to comprehend those proceedings. In light of Moon's acknowledgments in the written plea agreement and his statements at the plea canvass, the totality of the circumstances demonstrate that his guilty plea was knowingly and voluntarily entered,

and that he understood the nature of the offense and the consequences of his plea. Therefore, we conclude the district court did not err by denying this claim.

Improperly raised claims

Next, Moon claimed the State charged him with a crime to provide a cover for its failure to investigate a traffic accident and committed misconduct by improperly communicating with his counsel prior to the sentencing hearing. These claims were not based on an allegation that his guilty plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel, and therefore, these claims were not permissible in a postconviction petition for a writ of habeas corpus stemming from a guilty plea. See NRS 34.810(1)(a). Accordingly, Moon was not entitled to relief based upon these claims.

Claims of error concerning the postconviction proceedings

First, Moon argues on appeal that the district court improperly failed to rule upon his motion to transport him to court for a hearing. However, the record demonstrates that the district court denied the motion because it concluded that no oral argument was needed. Therefore, we conclude Moon is not entitled to relief based upon this claim.

Second, Moon argues on appeal the district court erred by failing to appoint postconviction counsel. The appointment of counsel in this matter was discretionary. See NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Because his petition was a first petition not subject to summary dismissal, see NRS 34.745(1), (4), Moon met the threshold requirements for the appointment of counsel. See NRS 34.750(1); *Renteria-Novoa*, 133 Nev.

at 76, 391 P.3d at 761. However, the issues in this matter were not difficult, Moon was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. Therefore, we conclude the district court did not err by denying the petition without appointing postconviction counsel.


Third, Moon argues on appeal that the district court improperly failed to consider his motion to withdraw guilty plea when it denied his petition. The record demonstrates that Moon did not file the motion as a separate document but rather included it as an exhibit filed with his petition. A review of the exhibit filed with Moon's petition reveals Moon addressed issues that were substantially similar to those raised in his petition. The district court denied Moon's petition and, therefore, also denied any relief Moon sought based upon exhibits he filed with the petition. Accordingly, we conclude Moon is not entitled to relief based upon this claim.

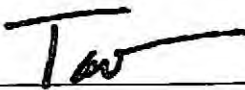
Fourth, Moon argues on appeal that he was not provided with a transcript of the plea canvass. However, the court recorder is not required to provide a pro se litigant with copies of any transcripts. Moon had to request a copy of the transcript through a properly filed document filed in the district court, *see Peterson v. Warden*, 87 Nev. 134, 135-36, 483 P.2d 204, 204-05 (1971), *superseded by statute on other grounds as stated in Renteria-Novoa*, 133 Nev. at 77, 391 P.3d at 762, but he did not do so. Therefore, we conclude Moon is not entitled to relief based upon this claim.

Fifth, Moon argues on appeal that he did not receive a copy of the State's response to his petition. The State certified in its response that it served Moon with the document via the postal service. Even assuming Moon did not receive the document, he failed to demonstrate any prejudice stemming from this issue. *See* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Therefore, we conclude Moon is not entitled to relief based upon this claim.

Sixth, Moon appears to argue on appeal that the district court erred by denying the petition without first conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific 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). The district court concluded Moon's claims did not meet that standard, and as indicated in the discussions above, the district court's conclusions in that regard were proper. Therefore, we conclude the district court did not err by denying the petition without conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 23
Paul Jay Moon
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk