

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83680-COA

FILED

JUN 13 2022

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

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Luis Angel Castro appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 7, 2021, and a supplement filed on July 6, 2021. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Castro claims the district court erred by denying his claims challenging the validity of his guilty plea without first conducting an evidentiary hearing. After sentencing, a district court may permit a petitioner to withdraw his guilty plea where necessary “to correct a manifest injustice.” NRS 176.165. “A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel. Manifest injustice may also be demonstrated by a failure to adequately inform a defendant of the consequences of his plea.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228-29 (2008) (footnote and internal quotation marks omitted). A guilty plea is presumptively valid, and a petitioner carries the burden of establishing the plea was not entered knowingly and intelligently. *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). In determining the validity of a guilty plea, this

court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Castro claimed he did not enter his guilty plea voluntarily and intelligently because he has low intellectual functioning, has impaired mental health, and was on antipsychotic medication. Castro's bare claim failed to specify what he did not understand regarding the entry of his plea. Moreover, during his plea canvass, Castro informed the court that he read the charging document, discussed it with counsel, and read and understood the plea agreement before signing it. Castro also informed the court that he was not suffering from any emotional distress that caused him to enter his plea and that he was not under the influence of any medication that might affect his ability to understand the documents or the plea process. Based on the totality of the circumstances, Castro failed to demonstrate his plea was not entered voluntarily and intelligently. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Castro also claimed he did not enter his guilty plea knowingly and voluntarily due to the ineffective assistance of counsel. 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, Castro claimed counsel was ineffective for failing to move to sever his case from his codefendants' cases or challenge the "package deal" plea offers, which were conditioned on each codefendant accepting their respective negotiations. Castro failed to allege facts that demonstrate a motion to sever or a challenge to the package deal plea offer would have been successful. See NRS 174.165 (providing when a defendant is entitled to a severed trial); *Rowland v. State*, 118 Nev. 31, 44, 39 P.3d 114, 122 (2002) (describing when a court should sever the trial of jointly indicted defendants); see also *Weatherford v. Bursey*, 429 U.S. 545, 561 (1977) (providing "there is no constitutional right to plea bargain"); *United States v. Caro*, 997 F.2d 657, 659 (9th Cir. 1993) (providing that "package deal plea agreements" are not per se impermissible despite the additional risk of coercion). Accordingly, Castro failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial but for counsel's inaction. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Castro claimed counsel was ineffective for allowing him to enter into a plea agreement that resulted in a prison sentence of life without the possibility of parole. Castro claimed that the evidence supported going to trial and that his sentence meant he did not benefit from the plea-bargaining process. In both the written plea agreement and plea canvass, Castro acknowledged he could be sentenced to life without the possibility of parole. The decision whether to enter the plea was Castro's. *See McConnell v. State*, 125 Nev. 243, 253, 212 P.3d 307, 314 (2009) ("Although counsel certainly owes a duty to advise his client whether to plead guilty, counsel does not have the authority to override a defendant's decision to plead guilty."). And Castro did not allege that counsel's advice was objectively unreasonable based on what counsel knew or should have known at the time Castro entered his plea. *See Strickland*, 466 U.S. at 689 ("A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time."). Accordingly, Castro failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial but for counsel's actions. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Castro claimed counsel was ineffective during plea negotiations for advising Castro's parents that the four defendants would be prosecuted separately and that Castro would receive a prison sentence of 15 to 25 years if he accepted his plea. Castro alleged that, based on these

false assertions, his parents threatened to withdraw their support for him if he did not plead guilty, which effectively coerced him into doing so. The district court found that this claim was bare and unsupported by the record and that any such representation made to Castro's parents by counsel was irrelevant as Castro and not his parents accepted the plea deal. The district court's findings of fact are not supported by substantial evidence in the record before this court. Rather, Castro included with his supplement a letter signed by his parents wherein they alleged that they hired Castro's counsel who told them that all four defendants would be prosecuted separately and if Castro pleaded guilty, he would receive a sentence of 15 to 25 years in prison.

Moreover, Castro supported his argument with specific factual allegations that were not belied by the record and, if true, would have entitled him to relief. *See Iaea v. Sunn*, 800 F.2d 861, 863, 868 (9th Cir. 1986) (reversing and remanding to the district court to determine the coercive impact of petitioner's brother's threat to withdraw petitioner's bail after counsel "communicated her strong belief that Iaea should accept the plea bargain through Iaea's brother Christopher because she knew that Iaea relied on his brother for help and guidance"). Therefore, we conclude the district court erred by denying this claim without conducting an evidentiary hearing. Accordingly, we reverse the district court's denial of this claim and remand for the district court to conduct an evidentiary hearing on this claim.

Next, Castro argues the district court erred by declining to appoint postconviction counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). Because the district court granted

Castro leave to proceed in forma pauperis and his petition was a first petition not subject to summary dismissal, *see* NRS 34.745(1), (4), Castro met the threshold requirements for the appointment of counsel. *See* NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). In light of this court's disposition, we direct the district court to reconsider whether the appointment of counsel is warranted.

Next, Castro claims the district court erred by not addressing his supplemental petition. The record demonstrates the district court ruled on the claims contained in Castro's supplemental petition. We therefore conclude Castro is not entitled to relief on this claim.

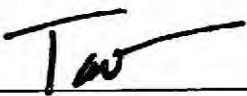
Next, Castro claims the district court erred by inaccurately embellishing the sentencing memorandum counsel filed. Castro claims the sentencing memorandum was only eight pages in length, not 68 as stated by the district court in its order. The substantive part of the memorandum is only eight pages in length but included numerous attachments offered in support of counsel's argument that Castro be sentenced to a prison term of 15 years to life. The entire pleading, including exhibits, is 68 pages long. Even had the district court misstated the length of the sentencing memorandum, Castro fails to demonstrate how the alleged error affected his substantial rights. *See* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). We therefore conclude Castro is not entitled to relief on this claim.

Finally, Castro claims for the first time on appeal that counsel was ineffective for failing to investigate, counsel was ineffective for failing to inform the trial-level court that Castro was intellectually and emotionally slow and did not participate in harming the victim, the trial-level court and

counsel erred by accepting Castro's plea without Castro first admitting to the elements of the crime, the sentencing court incorrectly considered Castro's criminal history at sentencing, and the district court erred by hearing Castro's petition because it presided over Castro's trial-level proceedings. Castro did not raise these claims below, and we decline to consider them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹Castro filed a motion on May 24, 2022, to clarify and/or correct the notice of rejection issued by the Nevada Supreme Court on May 11, 2022. The motion is granted as follows: The notice indicated that the State's answering brief and notice of appearance were rejected because they were filed in the incorrect court. The State subsequently filed the notice of appearance and answer in this court on May 11, 2022. Castro indicates that as of May 16, 2022, he has not received a copy of the notice of appearance or answering brief. This court's order issued on April 11, 2022, instructed Castro to file any reply brief 15 days after the date of the answering brief. Castro's reply brief was filed on May 26, 2022. Accordingly, we take no further action on this motion.

cc: Hon. Jerry A. Wiese, District Judge
Luis Angel Castro
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk