

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRYAN LEE ADAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85790-COA

FILED

SEP 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *E. A. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Bryan Lee Adams appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 2, 2022. Eighth Judicial District Court, Clark County; Elham Roohani, Judge.

Adams argues the district court erred by denying his claims of ineffective assistance of counsel without conducting an evidentiary hearing. To demonstrate ineffective assistance of 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 district 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). 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. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Adams contended counsel was ineffective for failing to (1) show him the charging document, (2) explain the charges or the elements of the charges, and (3) explain the plea agreement. Adams did not specify what charges, elements, or provisions of the plea agreement counsel failed to explain to him. *See Chappell v. State*, 137 Nev. 780, 788, 501 P.3d 935, 950 (2021) (stating a petitioner “must *specifically explain* how his attorney’s performance was objectively unreasonable” (quotation marks omitted)).

Moreover, the district court found that Adams’ allegations were belied by the record and, thus, Adams did not demonstrate deficiency or prejudice. In particular, the district court found that the transcript of the guilty plea canvass indicated that Adams received the information and guilty plea agreement, he understood these documents, and he discussed them with counsel. The district court also found that, even if counsel had been deficient, the plea canvass transcript demonstrated that the trial-level court explained any information which counsel did not.

Adams did not include a copy of the plea canvass transcript in his appendix. As the appellant, it is Adams’ obligation to provide this court with an adequate record for review. *See McConnell v. State*, 125 Nev. 243, 256 n.13, 212 P.3d 307, 316 n.13 (2009); *see also* NRAP 30(b)(3) (stating the appellant’s appendix filed on appeal shall include “any other portions of the record essential to determination of issues raised in appellant’s appeal”). Because this documentation is necessary to this court’s disposition, “we necessarily presume that [it] supports the district court’s decision,” *Cuzze*

v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). Accordingly, we cannot conclude the district court erred by denying these claims without conducting an evidentiary hearing.¹

Second, Adams contended counsel was ineffective for pressuring him into taking the plea offer. The district court found that the plea canvass transcript indicated Adams entered his plea freely and voluntarily and that no one forced or threatened him to enter his plea. Adams did not include a copy of the plea canvass transcript in his appendix, and for the reasons discussed above, we cannot conclude the district court erred by denying this claim without conducting an evidentiary hearing.

Third, Adams contended counsel was ineffective for failing to review all of the discovery with him. Adams did not specify what discovery counsel failed to review with him. Moreover, Adams did not allege there was a reasonable probability he would not have pleaded guilty and would have insisted on going to trial had counsel reviewed additional discovery with him. Therefore, Adams failed to allege specific facts that, if true, would have entitled him to relief. *See McConnell*, 125 Nev. at 253, 212 P.3d at 314 (holding a petitioner claiming counsel did not receive all discovery had to allege what discovery was outstanding and how that discovery would have convinced him not to plead guilty and proceed to trial). Accordingly, we

¹The district court also concluded that Adams failed to demonstrate prejudice because Adams would have had to proceed to trial on 20 counts, including four category A felonies, and Adams had no viable defense in light of DNA evidence. Adams challenges this reasoning on appeal. Even assuming the district court erred in this determination, for the reasons discussed above, we cannot conclude the district court erred by denying Adams' claims without an evidentiary hearing.

conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fourth, Adams contended counsel was ineffective for pressuring Adams' family members to convince Adams to take the plea offer. Adams did not specify what counsel did or said to pressure his family members to convince him to take the plea offer. Therefore, Adams failed to allege specific facts that, if true, would have entitled him to relief. See *Chappell*, 137 Nev. at 788, 501 P.3d at 950. Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.

Fifth, Adams contended counsel was ineffective for failing to contact or interview witnesses. Adams did not specify who these witnesses were, what information they would have provided, or how this information would have convinced him not to plead guilty and proceed to trial. Therefore, Adams failed to allege specific facts that, if true, would have entitled him to relief. See *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (providing that a petitioner claiming counsel did not conduct an adequate investigation must allege what the results of a better investigation would have been and how it would have affected the outcome of the proceedings). Accordingly, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.²

²To the extent Adams challenges by reference the district court's decision as to any other claims in his petition, we decline to consider such claims on appeal. Cf. NRAP 28(e)(2) (noting arguments on the merits of the appeal may not be incorporated by reference); see also *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

On appeal, Adams argues postconviction counsel was ineffective for failing to request an evidentiary hearing in his pleadings or in open court. Because the appointment of postconviction counsel was not statutorily or constitutionally required, *see Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); *McKague v. Warden*, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996), Adams was not entitled to the effective assistance of postconviction counsel. Therefore, we conclude Adams is not entitled to relief on this claim.

Adams also argues the district court “ignored several of the allegations listed in the petition and reply.” The district court’s order was clearly intended to be a final order disposing of the petition, and Adams does not identify any claims that the district court failed to address. Therefore, we decline to consider this claim. *See Maresca*, 103 Nev. at 673, 748 P.2d at 6.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 11
Ewing WN Enterprises LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk