

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JORGE SURI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 84803-COA

FILED

SEP 15 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

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

Jorge Suri appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 24, 2021. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

Suri argues the district court erred by denying his claims of ineffective assistance of trial-level counsel without conducting an evidentiary hearing. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 687.

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). 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).

First, Suri argued trial-level counsel was ineffective for failing to advise him until after he was sentenced that the State had offered an alternative plea agreement that would have stipulated to a prison sentence of two to five years. Suri contended that his decision to enter the plea agreement would have been different had counsel advised him of this alternative plea offer.

Regarding a plea offer, "counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Missouri v. Frye*, 566 U.S. 134, 145 (2012). To demonstrate prejudice concerning the plea negotiation process, "a defendant must show the outcome of the plea process would have been different with competent advice." *Lafler v. Cooper*, 566 U.S. 156, 163 (2012).

The district court recognized that Suri's claim, as alleged, had merit:

The offer has the tie in for this – I guess if you want to call it the slam dunk of the ineffective assistance because there's Supreme Court authority that says that if an offer is extended, a defense attorney has the duty to relay that offer prior to its expiration and failure to do that is per se ineffective assistance.

However, rather than granting Suri's request for an evidentiary hearing, the district court continued the matter to allow Suri to obtain an affidavit from trial-level counsel. Suri did not obtain such an affidavit, and the district court subsequently denied Suri's claim without conducting an evidentiary hearing.

“[B]ecause petitioners are entitled to an evidentiary hearing if they plead specific facts not belied by the record that, if true, would entitle them to relief, . . . it is improper for the district court to resolve a factual dispute created by affidavits without conducting an evidentiary hearing.” *Mann v. State*, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). The district court denied Suri’s claim because Suri did not offer any evidence of the alleged alternative plea offer. However, Suri alleged facts that were not belied by the record and, if true, would have entitled him to relief,<sup>1</sup> and Suri did not need to support his factual allegations with evidence in order to be entitled to an evidentiary hearing. Therefore, we conclude the district court erred by denying this claim without conducting an evidentiary hearing. We thus remand this matter to the district court to conduct an evidentiary hearing to determine (1) whether the State extended the alleged plea offer; (2) if so, whether trial-level counsel advised Suri of the offer; and (3) whether Suri would have accepted the offer.

Second, Suri argued counsel was ineffective for failing to file a sentencing memorandum. Specifically, Suri contended that a sentencing memorandum could have discussed or included proof of (1) how close he was to obtaining his high school diploma; (2) his enrollment in realty school; (3) his family history; (4) his drug issues and his efforts at rehabilitation; (5) his and his brothers’ auto detailing business; and (6) his status in the seven months from the date of the offense to the sentencing hearing. Suri further

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<sup>1</sup>We note that Suri was sentenced to 2 to 10 years in prison for attempted robbery and to a consecutive term of 1 to 10 years in prison for the use of a deadly weapon, which exceeds the stipulation of 2 to 5 years in prison allegedly contained in the alternative plea offer.

contended that a sentencing memorandum could have included letters of support from the community and proof of therapy.

At the sentencing hearing, trial-level counsel discussed the fact that (1) Suri was 18 years old and about to graduate from high school; (2) Suri was enrolled in realty school and had attended classes; (3) Suri's family was from Cuba, and Suri had to adapt to American culture; (4) Suri had a tough upbringing and lacked male role models; (5) Suri had family support; (6) Suri had a Xanax problem and was under the influence at the time of the offense; (7) Suri was motivated to clean himself up and had been sober since the offense; (8) Suri had been accepted into drug court; (9) Suri was starting a business with his brother in which they purchased a mobile car washing unit; and (10) Suri was not a danger to the community and had not had any incidents since the offense occurred. The trial-level court also heard from two victim speakers, and the State argued a prison sentence was appropriate given Suri's extensive involvement in the juvenile system.

No authority required trial-level counsel to file a sentencing memorandum, and counsel's argument in favor of mitigation was within "the wide range of professionally competent assistance." *See Strickland*, 466 U.S. at 690. Moreover, Suri did not specify who would have provided letters of support or what any such letters would have contained. Given the arguments of counsel and the statements of the victims, Suri failed to allege facts indicating a reasonable probability of a different outcome had counsel presented letters of support from the community or proof of the aforementioned mitigating evidence.

In light of the foregoing, Suri failed to allege facts that, if true, would demonstrate counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome absent

counsel's errors. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing. Accordingly, 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.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Tara D. Clark Newberry, District Judge  
Hitzke & Ferran  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk