

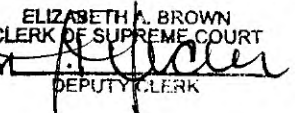
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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

No. 86310-COA

FILED

SEP 15 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Luis Angel Castro appeals from orders of the district court denying a postconviction petition for a writ of habeas corpus filed on June 7, 2021, and supplement petitions filed on July 6, 2021, and September 19, 2022. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Castro argues the district court erred by denying his challenge to the validity of his guilty plea based on the ineffective assistance of counsel. “A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008).

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), and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). 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). 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).

First, Castro claimed that counsel was ineffective for falsely promising Castro's family that Castro would be prosecuted separately from his codefendants. The district court conducted an evidentiary hearing concerning Castro's claim. At that hearing, Castro failed to prove by a preponderance of the evidence that counsel promised that Castro would be prosecuted separately from his codefendants. Accordingly, Castro failed to demonstrate counsel's performance was deficient or a reasonable probability he would not have pleaded guilty and would have insisted on proceeding to trial but for counsel's alleged promise. Therefore, we conclude the district court did not err by denying this claim.

Second, Castro claimed that counsel was ineffective for falsely promising Castro's family that Castro would receive a prison sentence of 15

to 25 years if he pleaded guilty.¹ Castro's family members all testified at the evidentiary hearing that counsel told them Castro would receive a sentence of 15 to 25 years. Counsel testified that he communicated with Castro's parents through Castro's brother, who was bilingual. Counsel did not recall telling Castro's parents that he would receive a 15-to-25-year sentence because that offer was not on the table, but he may have stated that Castro might do a minimum of 15 years before being paroled. An email counsel sent to Castro's brother before the entry of Castro's plea stated that if Castro accepted the deal, he faced the two possible sentences enumerated in the plea agreement: 15 years to life or life without the possibility of parole. Counsel followed up the email with a phone call to Castro's brother. Castro's parents were present during the call. Castro himself testified that he understood the plea deal involved only the two possible life sentences enumerated in the plea agreement.

The district court found the email only stated that Castro could receive the two possible sentences contained in the plea agreement and that the family may have misunderstood the offer. The district court found counsel's testimony to be credible. Substantial evidence supports the district court's findings. In light of these circumstances, Castro failed to

¹Castro argues on appeal that counsel induced or pressured Castro's parents into coercing Castro to plead guilty through additional acts. Castro raised these arguments for the first time at the evidentiary hearing, and it was not properly before the district court. See *Barnhart v. State*, 122 Nev. 301, 303-04, 130 P.3d 650, 651-52 (2006). We therefore decline to consider this argument on appeal. See *McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

demonstrate counsel's performance was deficient or a reasonable probability he would not have pleaded guilty and would have insisted on proceeding to trial. Therefore, we conclude the district court did not err by denying this claim. Accordingly, Castro failed to demonstrate his plea was invalid, and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 17
Steven S. Owens
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²To the extent Castro argues the district court erred by failing to make sufficient findings of fact or conclusions of law, we conclude the district court's order contains findings with sufficient specificity to permit this court to appropriately review its decision on appeal. Therefore, Castro fails to demonstrate he is entitled to relief based on this claim.