

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VAELLI TALIAOA,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN; AND
THE STATE OF NEVADA,
Respondents.

No. 87152-COA

FILED

FEB 23 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Vaelli Taliaoa appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 25, 2023. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

In his petition, Taliaoa contended that trial-level counsel was ineffective. 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*). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must show a reasonable probability that, but for counsel's errors, 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, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry—deficiency and prejudice—must be shown. *Strickland*, 466 U.S. at 687. 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). A petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle the petitioner to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Taliaoa claimed counsel was ineffective for withholding certain discovery from him. Taliaoa contended that counsel withheld the victim’s first interview, an interview with the victim’s sister, and medical records or photos. Taliaoa further contended that this evidence “favors him.” Taliaoa did not identify what this evidence contained or explain how this evidence would have affected his decision to plead guilty. Therefore, Taliaoa failed to allege specific facts indicating counsel’s performance was deficient or a reasonable probability he would not have pleaded guilty and would have insisted on going to trial but for counsel’s errors. Accordingly, we conclude the district court did not err by denying this claim.¹

¹To the extent Taliaoa attempts to add facts on appeal to support this claim, we decline to consider these facts for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

Second, Taliaoa claimed counsel was ineffective for failing to object to incorrect information in the presentence investigation report (PSI). Taliaoa contended that the PSI stated the victim had a broken rib but (1) there was no discovery to support this fact, (2) he was not charged with regard to the allegedly broken rib, and (3) the victim never stated that his rib hurt or that he was hit in the rib. The district court determined that the broken rib was supported by the police report in this case. The district court's determination is supported by the record. Moreover, neither the State nor the district court referenced the broken rib at the sentencing hearing. Therefore, Taliaoa failed to allege specific facts indicating counsel's performance was deficient or a reasonable probability of a different outcome but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim.²

Taliaoa argues on appeal that several of the victim's statements are false, that the district court erred in denying his presentence motion to withdraw his plea, and that the State made several claims at sentencing that are false or unsupported. These claims were not raised in Taliaoa's

²We note that Taliaoa filed an amended petition on July 2, 2023, that identified additional purported errors in the PSI. The district court did not authorize Taliaoa to file an amended petition, and the district court did not consider any new claims or facts raised in the amended petition in its July 17, 2023, order. The district court properly declined to consider Taliaoa's amended petition, *see* NRS 34.750(5), and we decline to consider any new claims or facts raised in the amended petition for the first time on appeal, *see McNelton*, 115 Nev. at 415-16, 990 P.2d at 1275-76.

petition below; therefore, we decline to consider them on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Mary Kay Holthus, District Judge
Vaelii Taliaoa
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We have reviewed all documents Taliaoa has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Taliaoa attempts to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance. *See McNelton*, 115 Nev. at 415-16, 990 P.2d at 1275-76.