

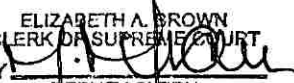
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AB'DUL CASTRO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86585-COA

FILED

MAR 25 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

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

Ab'dul Castro appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 11, 2018, and a supplemental petition filed on August 7, 2022. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

Castro claims the district court erred by denying his petition without first conducting an evidentiary hearing. 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 the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Castro claims the district court erred by denying his claim that he did not enter his plea knowingly and voluntarily because counsel was ineffective for failing to properly explain the plea agreement to him. After sentencing, a district court may permit a petitioner to withdraw his guilty plea where necessary “[t]o correct manifest injustice.” NRS 176.165; *see Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014) (stating NRS 176.165 “sets forth the standard for reviewing a post-conviction claim challenging the validity of a guilty plea”). “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). “This court will not invalidate a plea as long as the totality of the circumstances, as shown by the record, demonstrates that the plea was knowingly and voluntarily made and that the defendant understood the nature of the offense and the consequences of the plea.” *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000).

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).

In his petition, Castro claimed that while counsel was explaining the plea agreement to him, they were interrupted by the trial court calling his case. Further, he claimed that because the agreement was not fully explained to him, he did not understand the range of punishment

he could receive. He thought he could only receive a sentence of 5 to 15 years in prison.

The district court found that Castro answered affirmatively to all of the questions that were posed at the time of the entry of plea and Castro made a voluntary, knowing, and willing plea of guilty understanding the punishment he could be facing. The record supports the findings of the district court. At the change of plea hearing, Castro was informed of the possible punishments, stated he understood them, and agreed that no one promised him a particular sentence. Further, he told the district court that he understood the guilty plea agreement, counsel was available to answer all of his questions, and he understood his rights and what he was giving up. Finally, the guilty plea agreement informed Castro that the counts could be set to run concurrently or consecutively. Given the totality of the circumstances, we conclude that Castro failed to allege specific facts that are not belied by the record and that indicate he did not understand the agreement and possible punishments or that counsel's performance was deficient. *See Rubio*, 124 Nev. at 1038, 194 P.3d at 1228 (stating "a defendant may generally not repudiate [their] assertions, made in open court, that the plea is voluntary"). Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.


Next, Castro claimed the district court erred by denying his claim that counsel was ineffective at sentencing for failing to argue for a reduction in his sentence pursuant to NRS 176.017(2). To demonstrate ineffective assistance of counsel at sentencing, 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*, 466 U.S. at 687-88, 694.

The district court concluded that because Castro's sentence was within the parameters provided by the relevant sentencing statutes, Castro failed to demonstrate counsel was ineffective. The district court applied the wrong standard. As stated above, the correct standard is whether there was a reasonable probability of a different outcome had counsel argued for a sentence reduction pursuant to NRS 176.017(2).¹ Castro alleged specific facts that are not belied by the record, and if true, may entitle him to relief. Accordingly, we conclude that the district court erred by denying this claim without first conducting an evidentiary hearing. Therefore, 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

¹NRS 176.017(2) allows the sentencing court to reduce an offender's sentence by up to 35% if the offender was a minor at the time they committed their crime. In deciding whether to reduce the sentence, the sentencing court would have been required to consider the factors in NRS 176.017(1) and also consider whether "such a reduction is warranted given the age of the person and his or her prospects for rehabilitation." NRS 176.017(2).

cc: Hon. Tara D. Clark Newberry, District Judge
Nevada State Public Defender's Office
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk