

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT TROY MACHLAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88960-COA

FILED

JUN 30 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

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

Robert Troy Machlan appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on April 9, 2010, and supplemental points and authorities in support of that petition filed on September 10, 2015. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Machlan 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). 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).

Machlan argues the district court erred in denying his claim that trial counsel was ineffective for not requesting funds from the court to hire an investigator.¹ Machlan's claim did not specifically allege what evidence an investigator would have discovered or how that evidence would have affected the trial or his decision to enter a guilty plea. *See id.*; *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (providing a petitioner alleging a failure to investigate must demonstrate that additional investigation would have altered the outcome of the proceedings); *see also Hill*, 474 U.S. at 59 (stating that, in guilty plea cases, whether a defendant is prejudiced by counsel's failure to investigate potentially exculpatory evidence "will depend on the likelihood that discovery of the evidence would have led counsel to change [the] recommendation as to the plea," which itself will depend in large part on "whether the evidence likely would have changed the outcome of a trial"). Therefore, we conclude the district court did not err in denying this claim without conducting an evidentiary hearing.

Next, Machlan argues the district court erred in denying his claim that counsel was ineffective for not challenging several exhibits admitted at the preliminary hearing and at trial. Specifically, he contends counsel should have contested whether the evidence was sufficient for the justice court to bind him over for trial given defects in the packaging for preliminary hearing Exhibit 15. He also asserts counsel should have challenged preliminary hearing exhibits identified under exhibit 12 because

¹We note that Machlan initially proceeded to trial but pleaded guilty to the charges against him mid-trial.

of defects in the chain of custody and because some exhibits were photocopies and therefore did not constitute the best evidence.

Machlan failed to plead sufficient facts to show that counsel could have successfully challenged these exhibits or that litigating these challenges would have affected Machlan's decision to plead guilty. As an initial matter, Machlan did not support his claims below in the supplemental points and authorities in support of his petition filed by counsel or his arguments on appeal with citation to the relevant authority upon which trial counsel should have challenged this evidence. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). Further, the record does not suggest that any challenge to these exhibits would have been successful for several reasons.

First, while preliminary hearing exhibit 15 contained a purportedly forged check upon which the State planned to base an additional forgery charge, that check was not admitted during the preliminary hearing. Instead, it was withdrawn because the State was unable to establish a foundation for its admission. Machlan does not describe how excluding the remaining evidence contained in exhibit 15 would have affected the justice court's probable cause decision or his ultimate decision to enter a guilty plea.

Second, the alleged forged checks contained in preliminary hearing exhibit 12 were admitted at trial through the testimony of the detective who collected the items and booked them into evidence. As the foundation for the admission was established by that testimony, any doubt from the chain of custody would go to the weight this evidence was afforded

and not its admissibility. See *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 311 n.1 (2009); *Hughes v. State*, 116 Nev. 975, 981, 12 P.3d 948, 952 (2000); see also *Sorce v. State*, 88 Nev. 350, 352-53, 497 P.2d 902, 903 (1972) (providing that the State does not have to negate every possibility of tampering or substitution as any doubt goes to weight of evidence, not admissibility). As Machlan failed to demonstrate counsel could have excluded this evidence on this basis, he did not demonstrate that counsel's failure to make this challenge affected his decision to enter a guilty plea.

Third, Machlan's claim that counsel should have objected to several checks contained in exhibit 12 based on the best evidence rule is belied by the record.² See *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Machlan's trial counsel challenged multiple exhibits based on the best evidence rule at trial and those exhibits were admitted over counsel's objection. Machlan did not allege what further argument should have been made in support of this claim or demonstrate that such an argument would have been successful. Thus, Machlan has not met his burden of pleading sufficient facts to show counsel performed deficiently in not making these challenges, see *Kirksey*, 112 Nev. at 990, 923 P.2d at 1109 (recognizing where petitioner claims counsel failed to move to exclude evidence, petitioner has burden of showing that such a motion would have been successful and would have changed the result of trial), nor demonstrated that but for counsel's failure to make these challenges, he would not have pleaded guilty and would have continued with his trial. Accordingly, the

²"The best evidence rule requires production of an original document where the actual contents of that document are at issue and sought to be proved." *Young v. Nev. Title Co.*, 103 Nev. 436, 440, 744 P.2d 902, 904 (1987).

district court did not err in denying this claim without conducting an evidentiary hearing.

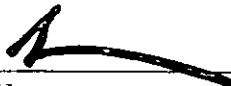
Machlan also asserts that counsel was ineffective for “surrendering” during trial and advising him to plead guilty to the charges without a plea agreement. He asserts that had counsel better prepared by investigating and challenging evidence as described above, counsel would not have advised him to plead guilty.

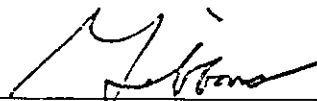
Machlan failed to allege sufficient facts to demonstrate counsel performed deficiently or prejudice. The plea canvass demonstrates that Machlan decided to plead guilty and knowingly and voluntarily entered his guilty plea. Machlan personally acknowledged he had a right to a jury trial, which in this case meant continuing his jury trial. Counsel’s candid advice regarding Machlan’s chances of acquittal based on the evidence admitted at trial did not constitute coercion. *See Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015) (stating “undue coercion occurs when a defendant is induced by promises or threats which deprive the plea of the nature of a voluntary act” (internal quotation marks omitted)); *Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 69, 412 P.3d 56, 62 (2018) (noting that one of the roles of an attorney is to provide candid advice to their client). Machlan further did not allege sufficient facts to demonstrate that advice was objectively unreasonable. As noted in the above claims, Machlan did not plead sufficient facts to demonstrate counsel’s advice would have been any different had counsel employed an investigator or challenged the State’s exhibits. Although Machlan may have desired a plea bargain, he was not entitled to a plea offer from the State. Accordingly, Machlan did not demonstrate the district court erred in denying this claim without conducting an evidentiary hearing.


Lastly, Machlan argues counsel was ineffective for failing to file a direct appeal. “[C]ounsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction.” *Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011).

Here, Machlan alleged he asked counsel to file an appeal. Pursuant to *Toston*, we conclude Machlan’s claim that counsel was ineffective for failing to file a direct appeal was not belied by the record and, if true, would entitle him to relief. *See id.* at 976, 267 P.3d at 799. Accordingly, we conclude Machlan was entitled to an evidentiary hearing on this claim. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, we reverse the district court’s decision as to this claim and remand this matter to the district court to conduct an evidentiary hearing on this claim. 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.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Kimberly A. Wanker, District Judge
David H. Neely, III
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk