

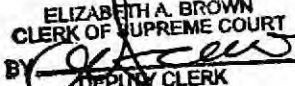
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KODY CREE PATTEN,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN ELY
STATE PRISON,
Respondent.

No. 82715-COA

FILED

FEB 18 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Kody Cree Patten appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Fourth Judicial District Court, Elko County; Kriston N. Hill, Judge.

Patten argues the district court erred by denying his February 20, 2013, petition and later-filed supplement without first conducting an evidentiary hearing. To demonstrate ineffective assistance of defense 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 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). 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).

Patten argued his counsel was ineffective for failing to investigate whether he offered a false confession in order to protect his codefendant from legal liability. The record contains detailed confessions from both Patten and his codefendant concerning their involvement in the murder. Both parties explained Patten's involvement in the victim's death. In addition, Patten's counsel interviewed the codefendant concerning her version of the events that resulted in the death of the victim. Patten did not identify any additional actions counsel should have undertaken to ascertain whether Patten's confession was an accurate account of the murder and he did not allege that counsel would have uncovered evidence that would have shown that Patten offered a false confession. Patten thus failed to allege specific facts in support of his claim. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (explaining that a petitioner claiming counsel should have conducted an investigation must identify what the investigation would have revealed); *see also Strickland*, 466 U.S. at 691 (“[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”).

Moreover, Patten received a substantial benefit by acceptance of the plea agreement as the State agreed not to pursue the death penalty in exchange for Patten's guilty plea. In light of the evidence concerning Patten's involvement in the murder and the substantial benefit he received by entry of his guilty plea, Patten failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to plead guilty and would

have insisted on proceeding to trial had counsel conducted further investigation into the accuracy of Patten's confession. 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.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kriston N. Hill, District Judge
Sears Law Firm, Ltd.
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk