

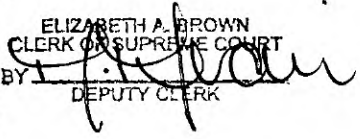
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAYSHAWN D. BAILEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85808-COA

FILED

JUN 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jayshawn D. Bailey appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Bailey argues that the district court erred by denying his August 29, 2022, petition. In his petition, Bailey claimed that his 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 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).

First, Bailey claimed that his counsel was ineffective for coercing him into accepting a plea bargain. Bailey contended that counsel knew he had an intellectual disability and she therefore manipulated him into accepting a plea bargain by stating to him that he would serve a long time in prison if he did not accept the plea bargain. Counsel's candid advice about the potential outcome of a trial and sentencing was not evidence of coercion. *See 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 his or her client). In addition, Bailey acknowledged in the written plea agreement that he entered into the plea agreement voluntarily and did not act under duress or coercion. Moreover, Bailey confessed to killing the victim, and he received a substantial benefit by accepting the plea bargain, as his charge was reduced from murder to voluntary manslaughter of a vulnerable person. For the foregoing reasons, Bailey failed to demonstrate his counsel coerced him into accepting a plea bargain or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial but for counsel's errors. Therefore, we conclude the district court did not err by denying this claim.

Second, Bailey appeared to claim that his counsel was ineffective for failing to file a motion to withdraw guilty plea. Bailey did not identify any bases upon which counsel should have moved for a withdrawal of Bailey's guilty plea. Bailey's bare claim failed to allege specific facts that, if true, would entitle him to relief. Accordingly, Bailey failed to demonstrate counsel's performance fell below an objective standard of reasonableness or

a reasonable probability of a different outcome absent counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Third, Bailey appeared to claim that his counsel was ineffective because counsel did not represent him to the best of her ability. Bailey's bare claim failed to allege specific facts that, if true, would entitle him to relief. Accordingly, Bailey failed to demonstrate counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome absent counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Bailey next claimed that his confession was involuntary. This claim was waived by entry of Bailey's guilty plea. *See Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (stating that the entry of a guilty plea generally waives any right to appeal from events occurring prior to the entry of the guilty plea). Therefore, we conclude the district court did not err by denying this claim.

Bailey also claimed that he acted in self-defense and the State failed to prove the corpus delicti of the crime. Bailey raised these claims separately and independently of his claims of ineffective assistance of counsel, and he did not allege that these issues caused his guilty plea to be involuntarily or unknowingly entered. These claims were thus outside the scope of claims permissible in a postconviction petition for a writ of habeas corpus arising from a guilty plea. *See NRS 34.810(1)(a); Gonzales v. State*, 137 Nev. 398, 403, 492 P.3d 556, 562 (2021). Therefore, we conclude the district court did not err by denying these claims.

Finally, Bailey appears to argue on appeal that his counsel was ineffective for failing to assert that he acted in self-defense and that police

detectives concealed records. However, Bailey did not raise these claims in his petition. Because Bailey did not raise these new allegations in his petition and he does not allege good cause for his failure to do so, we decline to consider them for the first time on appeal. *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.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Michelle Leavitt, District Judge
Jayshawn D. Bailey
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk