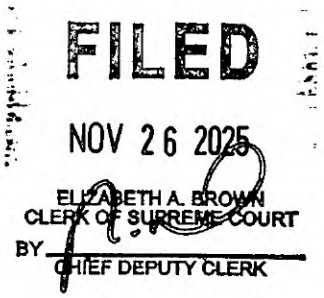
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CORNELIUS JOHNWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90111-COA



ORDER OF AFFIRMANCE

Cornelius Johnwell appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 20, 2024. Eighth Judicial District Court, Clark County; Erika L. Mendoza, Judge.

In his petition, Johnwell argued 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,[1] a petitioner must show a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have

[1]Johnwell entered his plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). An *Alford* plea is equivalent to a guilty plea insofar as how the court treats a defendant. *State v. Lewis*, 124 Nev. 132, 133 n.1, 178 P.3d 146, 147 n.1 (2008), *overruled on other grounds by State v. Harris*, 131 Nev. 551, 556, 355 P.3d 791, 793-94 (2015).

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. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Johnwell claimed counsel was ineffective for failing to investigate or present alibi evidence. Johnwell contended he was in California "attending court on certain dates when some of the alleged burglaries occurred" and that "court records" would corroborate his alibi. Johnwell's bare claim did not specify when he was in California or provide any details regarding these alleged court appearances. Therefore, Johnwell failed to allege specific facts indicating counsel's performance was deficient or a reasonable probability he would not have entered his *Alford* plea and would have insisted on going to trial but for counsel's errors. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (providing that a petitioner alleging an attorney should have conducted a better investigation must demonstrate what the results of a better investigation would have been and how it would have affected the outcome of the proceedings); *see also Chappell v. State*, 137 Nev. 780, 788, 501 P.3d 935, 950 (2021) (stating a petitioner alleging ineffective assistance of counsel "must *specifically explain* how his attorney's performance was objectively unreasonable" and "specifically articulate how counsel's deficient performance prejudiced him

or her" (quotation marks omitted)). Accordingly, we conclude the district court did not err by denying this claim.

Second, Johnwell claimed counsel was ineffective for failing to challenge the credibility of a detective's testimony or "the validity and reliability" of phone evidence. According to Johnwell, he was "never caught in possession of" the phone he was purportedly using during the burglaries, and the detective claimed he could identify Johnwell without seeing his face. Johnwell's bare claims did not specify how or when counsel should have challenged this evidence given his *Alford* plea. In entering his *Alford* plea, Johnwell waived his right to confront and cross-examine any witnesses against him, waived his right to hold the State to its burden of proof at trial, and affirmed that he had discussed "any possible defenses, defense strategies and circumstances which might be in [his] favor" with counsel. Therefore, Johnwell failed to allege specific facts indicating counsel's performance was deficient or a reasonable probability he would not have entered his *Alford* plea and would have insisted on going to trial but for counsel's errors. Accordingly, we conclude the district court did not err by denying these claims.

Third, Johnwell claimed counsel was ineffective for failing to file a motion to withdraw his plea. Johnwell contended that he expressed a desire to withdraw his plea "based on new evidence and reconsideration of the plea's implications." Johnwell's bare claim did not specify what this new evidence was, what "implications" he had reconsidered, or otherwise explain why withdrawal of his plea would have been fair and just. *See Stevenson v. State*, 131 Nev. 598, 603, 354 P.3d 1277, 1281 (2015). Therefore, Johnwell 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.

Fourth, Johnwell claimed counsel was ineffective for failing to ensure he was present for a settlement conference. Johnwell contended that his absence "possibly affect[ed] the fairness of the plea deal and the subsequent sentencing." Johnwell's bare claim did not specify why objectively reasonable counsel would have ensured he was present for the settlement conference or how his absence affected the plea negotiations or sentence. Therefore, Johnwell 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.

Fifth, Johnwell claimed counsel was ineffective for failing to "argue effectively for a more equitable sentence in line with [his] co-defendants." Johnwell contended that he received a longer sentence than his codefendants and that his sentence was disproportionately harsh. Johnwell's bare claim did not specify what counsel should have done differently or what arguments counsel failed to raise at sentencing. Therefore, Johnwell failed to allege specific facts indicating counsel's performance was deficient or a reasonable probability of a different outcome but for counsel's errors. *See Chappell*, 137 Nev. at 788, 501 P.3d at 950 (stating counsel is presumed to perform effectively and, "[t]o overcome this presumption, a petitioner must do more than baldly assert that his attorney could have, or should have, acted differently" (quotation marks omitted)); *see also Nobles v. Warden*, 106 Nev. 67, 68, 787 P.2d 390, 391 (1990) (explaining that "sentencing is an individualized process" and that courts

are not required "to sentence codefendants to identical terms"). Accordingly, we conclude the district court did not err by denying this claim.

Finally, Johnwell appeared to challenge the sufficiency of the evidence against him. For example, Johnwell contended that no witnesses were able to identify him as the perpetrator of the burglaries and that the State could not prove a phone used during the burglaries was his. Johnwell did not allege that he was unaware of these defenses or defense strategies such that his plea was unknowingly entered. Thus, to the extent Johnwell raised independent claims challenging the sufficiency of the evidence against him, his claims were outside the scope of claims permissible in a postconviction petition for a writ of habeas corpus stemming from a guilty plea. *See* NRS 34.810(1)(a) (stating such a petition may only allege "that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel"). Accordingly, we conclude the district court did not err by denying this claim.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Erika L. Mendoza, District Judge
Cornelius Johnwell
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk