

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK VONSEYDEWITZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60213

FILED

NOV 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Frederick Vonseydewitz's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; James M. Bixler, Judge. Vonseydewitz raises two issues on appeal.

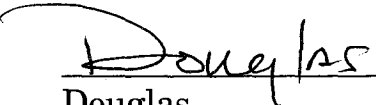
First, Vonseydewitz claims that the district court abused its discretion by failing to conduct an evidentiary hearing on his claims and that denying him an evidentiary hearing violated the Equal Protection Clause because "other similarly situated defendants receive evidentiary hearings on their meritorious claims." In determining whether to grant an evidentiary hearing on a post-conviction petition, the standard is whether the petitioner has made specific factual allegations that, if true and not belied by the record, would entitle him to relief. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). The district court found that Vonseydewitz's claim that his guilty plea was unknowing and involuntary was belied by the record. His claims of ineffective assistance of counsel and that the State violated the provisions of Brady v. Maryland, 373 U.S. 83 (1963), were insufficiently pleaded. And his claims that the district court erred by failing to record several bench conferences and that insufficient evidence supports his conviction were not appropriately raised


in the post-conviction petition. NRS 34.810(1)(a). Vonseydewitz has not demonstrated that the district court's decision was an abuse of discretion, see NRS 34.770 (giving the trial court discretion to determine if an evidentiary hearing is needed to resolve the claims), or that the district court violated the Constitution by denying the evidentiary hearing, see generally Junior v. State, 107 Nev. 72, 77, 807 P.2d 205, 208 (1991) (noting that the exercise of discretion, unless based on a protected class, does not violate equal protection).

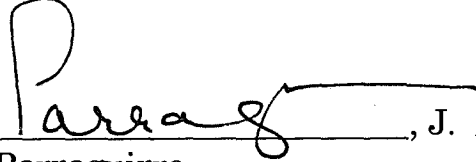
Second, Vonseydewitz claims that his trial counsel failed to inform him of his right to appeal. We decline to consider this contention because it was not presented to the court below in the first instance. McKenna v. State, 114 Nev. 1044, 1054, 968 P.2d 739, 746 (1998) ("Where a defendant fails to present an argument below and the district court has not considered its merit, we will not consider it on appeal.").

Having concluded that Vonseydewitz is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. James M. Bixler, District Judge
The Kice Law Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk