

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE IRAEL ALVAREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64090

FILED

DEC 11 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK


ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Tenth Judicial District Court, Churchill County; Robert E. Estes, Senior Judge.

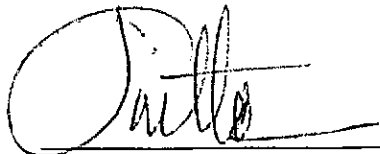
On appeal from the denial of his petition filed on June 8, 2010, and his supplemental petition, appellant argues that appellate counsel was ineffective for failing to challenge the sufficiency of the evidence to support the convictions of allowing a child to be present during commission of certain controlled substance violations, battery with the use of a deadly weapon, and assault with the use of a deadly weapon. Appellant concedes that he did not raise this claim in his petitions below. However, relying on *Hill v. State*, 114 Nev. 169, 178, 953 P.2d 1077, 1084 (1998), he argues that this court should nevertheless consider the merits of his claim in the first instance on appeal because the trial transcripts provide an adequate basis for review and the claim, if successful, would have the effect of invalidating his sentence. We decline to consider his claim of ineffective assistance of appellate counsel because he did not raise it in his proper person post-conviction petition or supplemental petition. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991),

overruled on other grounds by *Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004). We note that appellant's reliance on *Hill* is misplaced as that case involved a capital petitioner. Accordingly, we conclude that the district court did not err in denying the petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Pickering


_____, J.
Saitta

cc: Chief Judge, Tenth Judicial District
Hon. Robert E. Estes, Senior Judge
Law Office of David R. Houston
Churchill County District Attorney/Fallon
Attorney General/Carson City
Churchill County Clerk