

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TREVOR REID SWANSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66406

**FILED**

JUL 14 2015

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. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Appellant Trevor Reid Swanson argues the district court erred by denying his claims of ineffective assistance of counsel raised in his September 4, 2013, petition without conducting an evidentiary hearing. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability, 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 v. Washington*, 466 U.S. 668, 697 (1984). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific 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).

First, Swanson argues his counsel was ineffective for failing to investigate whether the child victim could have sustained the injuries through a fall or from the child's mother. Swanson fails to demonstrate his counsel's performance was deficient or resulting prejudice. Swanson provides no factual basis to support this claim. Bare claims, such as this one, are insufficient to demonstrate that a petitioner is entitled to relief. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming counsel did not conduct an adequate investigation must specify what a more thorough investigation would have uncovered); *see also Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225 (explaining that bare and naked claims are insufficient to demonstrate that a petitioner is entitled to relief). Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Second, Swanson argues his counsel was ineffective for coercing him into pleading guilty by threatening to physically harm Swanson. Swanson fails to demonstrate his counsel's performance was deficient or resulting prejudice. Swanson acknowledged in the guilty plea agreement and at the plea canvass that he entered his guilty plea voluntarily and he did not act under duress or coercion. Swanson also acknowledged at the plea canvass that he was satisfied with his counsel's representation of him. Swanson fails to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had he and counsel had further or different discussions regarding the guilty plea agreement. Therefore, the district

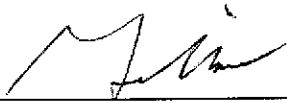
court did not err in denying this claim without conducting an evidentiary hearing.

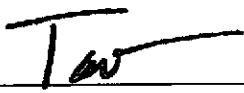
Third, Swanson argues his counsel was ineffective for failing to investigate Swanson's mental and physical state. Swanson appears to assert investigation into these issues would have provided support for a motion to suppress his statements to the police. Swanson fails to demonstrate his counsel's performance was deficient or resulting prejudice. Swanson does not explain what further investigation into his mental or physical state would have uncovered regarding his statement to the police. See *Molina*, 120 Nev. at 192, 87 P.3d at 538; *Hargrove*, 100 Nev. at 502-03, 686 P.2d a 225. Moreover, Swanson does not include a transcript of his statement to the police in the appendix before this court. As Swanson is the appellant, it is his burden to provide this court with an adequate record for review, see *McConnell v. State*, 125 Nev. 256 n.13, 212 P.3d 307, 316 n.13 (2009), and thus, he fails to demonstrate there was a reasonable probability of a different outcome had counsel moved to suppress the confession. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.


Fourth, Swanson argues his counsel was ineffective for failing to inform Swanson regarding his right to a direct appeal and for failing to file a notice of appeal. The duty to inform or consult with a client regarding appealing a judgment of conviction based on a guilty plea only arises "when the defendant inquires about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the right to a direct appeal." *Toston v. State*, 127 Nev. \_\_\_, \_\_\_, 267 P.3d 795, 799 (2011). The district court concluded that Swanson did not demonstrate he had inquired about a direct appeal or there were

circumstances where counsel should have advised Swanson regarding the appeal. Swanson for the first time on appeal argues he expressed dissatisfaction with his sentence and therefore, counsel had a duty to file a notice of appeal. *See id.* at \_\_\_, 267 P.3d at 800-01. As this assertion was not raised in the petition before the district court, we will not consider it in the first instance on appeal. *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.2d 25, 33 (2004). Accordingly, Swanson fails to demonstrate he was entitled to relief for this claim.

Having concluded Swanson is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Lidia Stiglich, District Judge  
Story Law Group  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk