

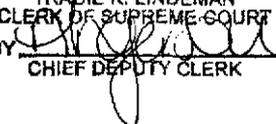
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARTH FRANKLYN COURTNEY,  
Appellant,  
vs.  
CITY OF LAS VEGAS; AND THE  
STATE OF NEVADA,  
Respondents.

No. 68373

**FILED**

FEB 17 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from an order of the district court denying a petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

On appeal from the denial of his December 5, 2014, petition, appellant Garth Franklyn Courtney argues the district court erred by concluding he entered a knowing and voluntary no contest plea. Courtney asserts he entered his plea after his counsel improperly informed him he faced a 90-day jail sentence if he went to trial and he did not have enough time to consult with his counsel to make a proper decision regarding his plea.<sup>1</sup>

Courtney fails to meet his burden to demonstrate he did not enter a knowing and voluntary plea. *See Bryant v. State*, 102 Nev. 268,

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<sup>1</sup>We note the parties and the district court did not consider whether Courtney could meet the custody or imprisonment requirements of NRS chapter 34 to pursue habeas relief. *See Coleman v. State*, 130 Nev. \_\_\_, \_\_\_, 321 P.3d 863, 865-66 (2014). Because our resolution of this issue is not necessary for our disposition of this appeal, we decline to address it.

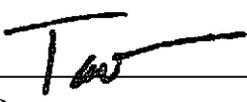
272, 721 P.2d 364, 368 (1986), *superseded by statute on other grounds as stated in Hart v. State*, 116 Nev. 558, 562 n.3, 1 P.3d 969, 971 n.3 (2000); *see also State v. Lewis*, 124 Nev. 132, 134 n.1, 178 P.3d 146, 147 n.1 (2008) (noting that a no-contest plea is equivalent to a guilty plea insofar as how the court treats a defendant). Courtney was notified in the waiver of rights form of the charge he faced, the possible range of penalties, and the rights he waived by entering his no contest plea. In addition, the waiver of rights form notified Courtney the sentence imposed is the judge's decision. Courtney also acknowledged in the waiver of rights form and at the plea canvass he had discussed this matter with his counsel and entered his plea voluntarily. We conclude the totality of the circumstances demonstrated Courtney's no contest plea was valid, *see State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000), and Courtney fails to demonstrate a manifest injustice warrants withdrawal of his plea. *See Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228-29 (2008). Therefore, the district court did not err in denying this claim.

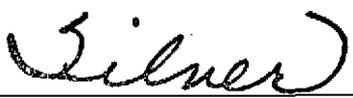
Next, Courtney argues his trial counsel and his initial postconviction counsel were ineffective. However, this court generally declines to consider issues which were not raised in the district court in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Our review of the record before this court reveals Courtney did not raise claims of ineffective assistance of counsel before the district court. Because Courtney does not demonstrate cause for his failure to raise these claims before the district court, we decline to

consider them in this appeal.<sup>2</sup> See *McNelton*, 115 Nev. at 416, 990 P.2d at 1276. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Douglas W. Herndon, District Judge  
Bailus Cook & Kelesis  
Attorney General/Carson City  
Las Vegas City Attorney/Criminal Division  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>Moreover, Courtney did not have a right to the effective assistance of postconviction counsel for this case. See *Crump v. Warden*, 113 Nev. 293, 303 & n.5, 934 P.2d 247, 258 & n.5 (1997); see also *Brown v. McDaniel*, 130 Nev. \_\_\_, \_\_\_, 331 P.3d 867, 870 (2014) (“[T]here is no constitutional or statutory right to the assistance of counsel in noncapital post-conviction proceedings”).