

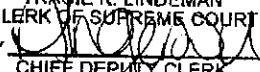
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VALLIER W. TOMPKINS,  
Appellant,  
vs.  
WARDEN, N.N.C.C.; AND THE STATE  
OF NEVADA,  
Respondents.

No. 68349

**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 dismissing a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Appellant Vallier W. Tompkins argues the district court erred in dismissing his July 11, 2013, petition without conducting an evidentiary hearing. "We review the district court's determination that a petitioner is not entitled to an evidentiary hearing for abuse of discretion." *Stanley v. Schriro*, 598 F.3d 612, 617 (9th Cir. 2010). A district court may reject a claim without conducting an evidentiary hearing when the claim (1) is belied by the record; (2) is not supported by specific facts, which, if true, would entitle petitioner to relief; or (3) is procedurally barred and the petitioner has failed to overcome the procedural bar. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008).

In his petition, Tompkins alleged his counsel was ineffective for failing to permit him to testify before the justice court because he could have pursued an insanity defense based upon being awake for 20 straight days and for having a conflict of interest because a parent of the victim allegedly worked at the public defender's office. Tompkins also alleged he

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was not advised of his right to pursue a direct appeal, the district court erred by considering prejudicial letters from the victims in this matter, and his guilty plea was not entered knowingly and voluntarily because the meaning of an *Alford*<sup>1</sup> plea was not explained to him. Tompkins also asserted the guilty plea agreement did not contain a certificate of counsel as required by NRS 174.063.

Here, the district court reviewed the parties' pleadings and made the following findings: Tompkins waived his right to a preliminary hearing, and therefore, Tompkins' claim regarding testifying at that hearing was belied by the record. The victim's family member actually worked for the Washoe District Attorney's Office, not the public defender's office, and therefore, Tompkins' claim regarding a conflict of interest was belied by the record. Tompkins was advised of his right to pursue a direct appeal and Tompkins did not demonstrate any further duty existed to inform him regarding an appeal. NRS 176.015(3) permitted the district court to consider the victim impact letters during the sentencing hearing.<sup>2</sup> Tompkins entered a standard guilty plea, and Tompkins did not demonstrate there was any duty to explain an *Alford* plea to him. Tompkins did not demonstrate manifest injustice sufficient to warrant setting aside his guilty plea. Based on those findings, the district court

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<sup>1</sup>*North Carolina v. Alford*, 400 U.S. 25 (1970).


<sup>2</sup>We also note Tompkins' claim regarding the district court's consideration of victim impact letters at the sentencing hearing is not properly raised in a postconviction petition for a writ of habeas corpus stemming from a guilty plea. See NRS 34.810(1)(a). Nevertheless, the district court properly denied relief for this claim. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).


concluded all of Tompkins' claims were either belied by the record or were not supported by sufficient specific facts which would entitle Tompkins to relief if true. Accordingly, the district court declined to conduct an evidentiary hearing and dismissed the petition. *See Rubio*, 124 Nev. at 1046 & n.53, 194 P.3d at 1233-34 & n.53.

On appeal, Tompkins lists the claims he raised below and the conclusions of the district court. However, Tomkins does not identify any errors he believes the district court made in its conclusions. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining it is the appellant's responsibility to present relevant authority and cogent argument). Our review reveals the record supports the district court's decision to dismiss the petition without conducting an evidentiary hearing and Tompkins has not demonstrated the district court abused its discretion in this regard. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Elliott A. Sattler, District Judge  
Mary Lou Wilson  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk