

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SAMUEL KING,
Appellant,
vs.
WARDEN NEVEN,
Respondent.

No. 69364

FILED

JUN 22 2015

TRACIE K. LINEBMAN
CLERK OF SUPREME COURT
BY *J. Hendrick*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court quashing a postconviction petition for a writ of habeas corpus.¹ Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Appellant Samuel King argues the district court erred in denying his claims of ineffective assistance of counsel as raised in his June 10, 2015, petition. 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

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

(1984). To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific factual 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).

King first argues his counsel was ineffective for failing to properly explain the guilty plea agreement. King asserts counsel informed him he could be convicted due to the testimony of the victim alone, he faced a life sentence if he did not plead guilty, and that counsel did not convey the actual plea agreement to him. King fails to demonstrate his counsel's performance was deficient or resulting prejudice. As the testimony of a sexual abuse victim alone may be sufficient to uphold a conviction, *Mejia v. State*, 122 Nev. 478, 493 n.15, 134 P.3d 722, 725 n.15 (2006), and King faced a life sentence due to his charge of lewdness with a child under the age of 14, see NRS 201.230(2), counsel's advice in this regard was accurate. In addition, King asserted in the written guilty plea agreement he had discussed the charges and possible defenses with his counsel, counsel had answered all of his questions to his satisfaction, and he had concluded the plea bargain was in his best interests. Under these circumstances, King does not demonstrate his counsel acted in an objectively unreasonable manner.

Moreover, King was informed in the written guilty plea agreement and at the plea canvass of the rights he waived and the possible sentence he faced in exchange for pleading guilty to attempted sexual assault of a child under the age of 14. Accordingly, King fails to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel provided further explanation of the guilty plea agreement. Therefore, the district

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

Second, King argues his counsel was ineffective for advising him to write a confession in order to gain favor from the sentencing judge. King fails to demonstrate either deficiency or prejudice for this claim. King did not provide cogent argument as to why this was advice amounted to deficient performance by his counsel or how this issue prejudiced him. Bare claims, such as this one, are insufficient to demonstrate a petitioner is entitled to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984); *see also Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is [the] appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court"). Therefore, King fails to demonstrate the district court erred in denying this claim.

Third, King argues his counsel was ineffective for failing to pursue a direct appeal. On an appeal involving a postconviction petition for a writ of habeas corpus, 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). A review of the record before this court reveals King did not assert his counsel was ineffective for failing to pursue a direct appeal in his petition below. Because King does not demonstrate cause for his failure to raise this claim before the district court, we decline to consider it in this appeal.


Next, King argues the district court did not make appropriate findings or conclusions in its written order denying relief to King. We conclude the district court's written order was sufficient for this court's

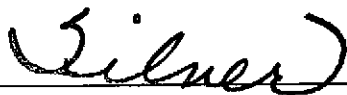
appellate review of this matter. Therefore, King fails to demonstrate he is entitled to relief for this claim.

Finally, King argues the district court erred in declining to appoint postconviction counsel to represent him in this matter. The appointment of postconviction counsel was discretionary in this matter. See NRS 34.750(1). After a review of the record, we conclude the district court did not abuse its discretion in this regard as this matter was not sufficiently complex so as to warrant the appointment of postconviction counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Robert W. Lane, District Judge
Samuel King
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk

²We note the district court denied relief by quashing the postconviction petition for a writ of habeas corpus. However, NRS chapter 34 does not contemplate a district court's disposition of a petition by quashing the petition. See NRS 34.830(2). Nevertheless, the district court properly denied relief to King, and we therefore affirm. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.").