

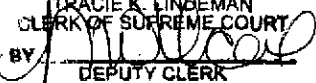
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN JEFFREY MCNAB,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN,
SOUTHERN DESERT CORRECTIONAL
CENTER,
Respondent.

No. 69024

FILED

JUN 22 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
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 John McNab claims the district court erred by denying his June 30, 2015, petition. First, he claims standby counsel was ineffective for coercing his plea because counsel told McNab if he did not plead guilty, the State would charge his wife with conspiracy and seize his wife's and daughter's assets. Prior to entering his guilty plea, McNab elected to represent himself. Because McNab was not entitled to the appointment of standby counsel, *Harris v. State*, 113 Nev. 799, 804, 942 P.2d 151, 155 (1997), he also was not entitled to the effective assistance of standby counsel, *see generally McKague v. Warden*, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996) (holding that postconviction petitioner who has no constitutional or statutory right to the appointment of counsel has no

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

right to the effective assistance of postconviction counsel); *see also Faretta v. California*, 422 U.S. 806, 835 (1975) (stating that “[w]hen an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel”). Therefore, the district court did not err in denying this claim without an evidentiary hearing. *See Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (to warrant an evidentiary hearing, a petitioner must support his claims with specific facts not belied by the record that, if true, would entitle him to relief).

To the extent McNab claims the State coerced his plea by threatening to charge his wife with conspiracy and to seize his wife’s and daughter’s assets, this claim is belied by the record. *Id.* McNab acknowledged in the guilty plea agreement he was not acting under duress or coercion when signing the agreement. Further, during the plea canvass, the district court specifically asked him if anyone made any threats or promises besides the negotiation and McNab answered “no.” Therefore, the claim is belied by the record and the district court did not err in denying this claim without an evidentiary hearing. *Id.*

McNab also claims there was a conflict of interest between him and standby counsel because standby counsel was a “part time” assistant district attorney. McNab fails to demonstrate there was a conflict because, while it appears standby counsel was a deputy district attorney at some point, at the time he represented McNab he was not employed by the district attorney’s office. Further, McNab does not allege standby counsel had any knowledge of McNab’s case from his work as a deputy district attorney. Therefore, the district court did not err in denying this claim without an evidentiary hearing. *Id.*

Next, McNab claims counsel was ineffective for failing to investigate the crimes or his possible defenses, for failing to challenge the search and seizure, and for not raising the search and seizure issue on appeal. He also claims the district court showed bias at the arraignment hearing, the district court did not correctly explain to him the role of standby counsel, he did not voluntarily waive his right to counsel, the search of his home was illegal, and he was denied the right to competent counsel. McNab did not assert these claims below in his petition. Because McNab does not demonstrate cause for his failure to raise these claims before the district court, we decline to consider them in the first instance in this appeal.² See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).


Next, McNab argues he was denied due process and the Double Jeopardy Clause was violated because although he paid his fine of \$1200.11 at sentencing, he is still being billed. This claim is outside the scope of claims permissible to raise in a postconviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea, see NRS 34.810(1)(a). Therefore, the district court did not err in denying this claim without an evidentiary hearing.


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

²To the extent McNab argues these claims were raised in his motion to reconsider the district court's order quashing the petition, we conclude the claims are not properly before this court because the district court did not consider them when quashing the petition.

this court's appellate review of this matter. Therefore, McNab fails to demonstrate he is entitled to relief for this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Robert W. Lane, District Judge
John Jeffrey McNab
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk

³We 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 McNab, 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.").