

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES CURTIS PHILLIPS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69875

**FILED**

OCT 19 2016

ELIZABETH A. BROWN  
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 postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Appellant James Phillips claims the district court erred by denying his petition filed on November 12, 2015. Specifically, he claims the district court erred by denying his claim the district court and the State breached the plea agreement.

In the petition below, Phillips raised this claim as an ineffective assistance of counsel claim for failure to object to the State breaching the plea agreement by informing the court there were allegations of sexual abuse in this case. We conclude the district court did not err in denying this claim because an objection by counsel would have been futile. *See Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (to prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective


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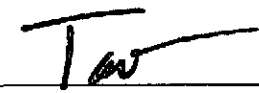
<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different); *Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (stating counsel is not deficient for failing to file futile motions or objections). The State retained the right to argue in the plea agreement and Phillips agreed "information regarding charges not filed, dismissed charges, or charges to be dismissed pursuant to this agreement may be considered by the judge at sentencing." Phillips had originally been charged with several counts of coercion (sexually motivated) and lewdness with a child under the age of 14. These charges were dropped in exchange for Phillips' plea to two counts of child abuse, neglect, or endangerment.

Further, to the extent Phillips separately claimed the State and the district court breached the plea agreement, these claims were not properly raised in a postconviction petition for a writ of habeas corpus challenging a judgment of conviction entered pursuant to a guilty plea. See NRS 34.810(1)(a). Therefore, the district court did not err in denying the petition, and we

ORDER the judgment of the district court AFFIRMED.

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

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

cc: Hon. Richard Scotti, District Judge  
James Curtis Phillips  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk