


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN JOEY MARKS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70997

**FILED**

NOV 18 2016

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Appellant John Joey Marks appeals from a district court order denying his postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Marks claims the district court erred by denying his petition after concluding his claims did not challenge the effectiveness of counsel or the validity of the guilty plea. Marks argues the district court is biased because he clearly raised two claims of ineffective assistance of counsel. And Marks appears to assert his guilty plea is not supported with sufficient evidence.

The record reveals Marks entered a guilty plea to one count of robbery with the use of a deadly weapon, he was adjudicated a habitual criminal and sentenced to a prison term of 96 to 240 months, and the judgment of conviction was entered on July 2, 2015. Marks did not pursue a direct appeal; however, on March 30, 2016, he filed a habeas petition in which he raised two claims of ineffective assistance of counsel.

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

Curiously, the district court made findings on the record that were inconsistent with the procedural history of Marks' case and the claims he raised in his petition. The district court found Marks' claims were waived because they were not raised on direct appeal, they did not challenge the effectiveness of counsel or the validity of the guilty plea, and they were based on what happened at sentencing. The district court further found Marks' petition was untimely, he had not shown good cause or prejudice to excuse the procedural bar, and the record belied his claim that defense counsel was ineffective for guaranteeing probation. The district court denied the petition and a minute order was distributed to Marks.

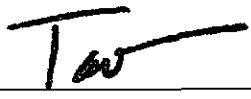
Thereafter, the district court entered a written order in which it addressed Marks' claims that defense counsel was ineffective for (1) failing to investigate his mental state/competence before advising him to plead guilty and (2) failing to investigate anything in his case. The district court found the record was devoid of any indication Marks was incompetent prior to and during the entry of his plea. Marks informed the district court of his reading and writing disability and stated counsel had explained the contents of the written guilty plea agreement to him. Marks' alleged mental health issues did not necessarily render him incompetent to participate in the criminal proceedings. Marks' claims that a more thorough investigation would have shown he was not attempting to rob the victims and the witnesses were unreliable and untrustworthy were belied by the record. And Marks failed to show how a better investigation would have made a more favorable outcome probable.

Although Marks' appeal appears to challenge the district court's minute order, it is the district court's written order that governs

the disposition of his habeas petition. *See generally Bradley v. State*, 109 Nev. 1090, 1094-95, 864 P.2d 1272, 1274-75 (1993). The factual findings contained in the written order are supported by the record and we conclude the district court did not err by denying Marks' petition without appointing counsel. *See* NRS 34.750(1); *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005); *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004); *Riker v. State*, 111 Nev. 1316, 1325, 905 P.2d 706, 711-12 (1995). We decline to consider Marks' insufficient-evidence claim because it was not raised in the district court in the first instance. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991). For these reasons, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Douglas Smith, District Judge  
John Joey Marks  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk