

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEE E. DAVIDSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72433

FILED

DEC 29 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Lee E. Davidson appeals from an order of the district court denying his November 11, 2016, postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Davidson first contended he received ineffective assistance of counsel at his guilty plea and sentencing. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate 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*,

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

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 (1984). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that, if true and not repelled by the record, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).


First, Davidson claimed that, during the plea negotiation process, counsel misled him regarding the use of mitigating facts in his presentence investigation report at his sentencing hearing. Davidson's bare claim did not specify what mitigation evidence he expected to glean from the presentence investigation report or how it affected his decision to plead guilty. We therefore conclude the district court did not err in denying this claim without first conducting an evidentiary hearing.


Second, Davidson also challenged counsel's waiver of the reading of his prior convictions supporting habitual criminal treatment, because it deprived him of the opportunity of challenging them as constitutionally infirm. Davidson's bare claim did not specify any infirmities he might have raised or how they would have affected the outcome of his sentencing hearing. We therefore conclude the district court did not err in denying this claim without first conducting an evidentiary hearing.

Davidson next contended the district court violated his due-process rights at sentencing when it did not use a presentence investigation report and did not find it was "just and proper" to adjudicate him a habitual criminal. Davidson waived these claims by failing to raise them in a direct

appeal. See *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), *overruled in part on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999). We therefore conclude the district court did not err in denying these claims without first conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
Lee E. Davidson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We also conclude the district court did not abuse its discretion in declining to appoint postconviction counsel. See NRS 34.750(1); *Renteria-Nova v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017).