

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID LEE MEEKS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73483

**FILED**

MAR 14 2018

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

*ORDER OF AFFIRMANCE*

David Lee Meeks appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on March 28, 2017, and the supplement he filed on April 17, 2017.<sup>1</sup> Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Meeks claims the district court erred by denying his claim counsel was ineffective for failing to investigate his mental health. 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*, 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). We give deference to the court's

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

factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

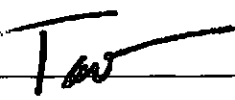
Meeks failed to demonstrate counsel was deficient or resulting prejudice. Meeks admitted in his petition below counsel knew he had schizophrenia and was taking medications to treat his mental health issues. Meeks failed to demonstrate what further evidence counsel needed to investigate. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Further, Meeks litigated a presentence motion to withdraw his guilty plea which sought to withdraw his plea because he was incompetent at the time his plea was taken. The district court concluded Meeks was competent at the time of his plea and denied the motion to withdraw. We note, after his plea was entered and before sentencing, Meeks was referred to competency court and he was found competent. Meeks also failed to allege how his mental health diagnosis caused him to be unable to "understand the nature of the criminal charges and the nature and purpose of the court proceedings," and caused him to be unable to "aid and assist his [ ] counsel in the defense at any time during the proceedings with a reasonable degree of rational understanding." *Scarbo v. Eighth Judicial Dist. Court*, 125 Nev. 118, 122, 206 P.3d 975, 977 (2009); *see also* NRS 178.400 (setting forth Nevada's competency standard). Finally, Meeks failed to demonstrate he would not have pleaded guilty and would have insisted on going to trial had counsel further investigated his mental health. Therefore, the district court did not err by denying this claim.


Meeks also raises several claims on appeal that were not raised below: counsel was ineffective for promising Meeks he would get probation, counsel was ineffective for giving him improper legal advice and coercing

him into pleading guilty, counsel was ineffective for failing to object to the State's failure to disclose a sentence structure in his guilty plea, and the district court abused its discretion by increasing his sentence because he failed to appear for sentencing. These claims were not raised in his petition below, and we decline to address them for the first time on appeal. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

cc: Hon. Douglas Smith, District Judge  
David Lee Meeks  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>We conclude the district court did not abuse its discretion by declining to appoint counsel in this matter. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. \_\_\_, \_\_\_, 391 P.3d 760, 760-61 (2017).