

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PEDRO TYRONE BELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73188

**FILED**

SEP 11 2018

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

*ORDER OF AFFIRMANCE*

Pedro Tyrone Bell appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

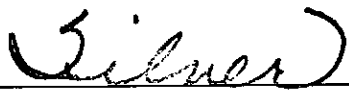
Bell argues the district court erred by denying the claim of ineffective assistance of counsel he raised in his June 22, 2016, petition and later filed supplemental petition. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner 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 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).

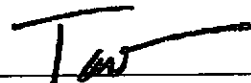
Bell claimed his counsel was ineffective for failing to properly inform him of a plea offer from the State. Bell asserted the State offered to amend the charge to attempted murder and remove the deadly weapon enhancement, but counsel did not inform Bell of that offer until after it had already expired. Bell failed to demonstrate his counsel's performance was deficient or resulting prejudice. At the evidentiary hearing, counsel testified that he advised Bell of all of the State's plea offers and that none of the offers included removal of the deadly weapon enhancement. The district court found counsel's testimony was credible and substantial evidence supports that conclusion. Given the district court's factual finding, Bell failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. Moreover, Bell did not demonstrate "a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time," *Missouri v. Frye*, 566 U.S. 134, 147 (2012), and therefore failed to meet his burden to demonstrate he was prejudiced by counsel's actions regarding the plea negotiations. Therefore, we conclude the district court did not err by denying this claim.


Next, Bell argues his counsel was ineffective for advising him he could face the death penalty if the victim were to die. Bell asserts the victim was on life support when this conversation took place and that he felt coerced into pleading guilty to attempted murder with the use of a deadly weapon. On an appeal involving a postconviction petition for a writ of habeas corpus, this court generally declines to consider claims that were not raised in the district court in the first instance. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). A review of the record before this court reveals Bell did not raise this claim in his petition or supplement

before the district court and the district court did not address this issue in its order denying the petition. Because Bell does not demonstrate cause for his failure to raise this claim before the district court, we decline to consider it in this appeal. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

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

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

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<sup>1</sup>We note the judgment of conviction contains a typographical error concerning the minimum term for the deadly weapon enhancement. At the sentencing hearing, the sentencing court orally imposed a prison term of 96 months to 240 months for attempted murder, a consecutive prison term of 48 months to 120 months for the deadly weapon enhancement, and pronounced a total aggregate prison sentence of 144 months to 360 months. The judgment of conviction correctly states the sentence for the term for attempted murder and the total aggregate sentence, but erroneously states the minimum term for the deadly weapon enhancement is 12 months. However, such typographical errors may be corrected at any time. See NRS 176.565 (stating “[c]lerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time.”).

cc: Hon. Stefany Miley, District Judge  
Christopher R. Arabia  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk