

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARIN MICHAEL LEE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73491

**FILED**

JUL 31 2018

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

*ORDER OF AFFIRMANCE*

Darin Michael Lee appeals 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; Douglas Smith, Judge.

Lee argues the district court erred by denying the claim of ineffective assistance of counsel raised in his February 28, 2017, 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).

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

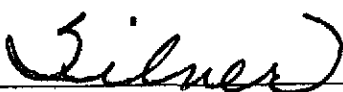
Lee claimed his counsel was ineffective for forcing him to sign the written plea agreement under duress and asserts he did not understand the agreement. Lee failed to demonstrate his counsel's performance was deficient or resulting prejudice. Lee acknowledged in the written plea agreement and at the plea canvass that he entered his guilty plea voluntarily and that he did not act under duress or coercion. Lee also acknowledged in the written plea agreement and at the plea canvass that he read and understood the agreement. Lee further asserted that he had discussed the plea agreement with his counsel and counsel had answered all of his questions concerning the agreement. Given the record before this court, we conclude Lee failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. Lee also failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel performed different actions regarding the plea agreement. Therefore, we conclude the district court did not err by denying this claim.

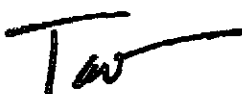
Second, Lee appeared to claim his counsel was ineffective for causing him to waive his right to a preliminary hearing and for failing to appear at a hearing. Lee did not raise these issues before the district court and we decline to consider them in the first instance. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).


Next, Lee claimed the State committed prosecutorial misconduct, the trial-level court committed misconduct, and the State breached the plea agreement. Lee also appeared to claim there was insufficient evidence to support his conviction. These claims were not based on an allegation that Lee's plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel and,

therefore, were not permissible in a postconviction petition for a writ of habeas corpus stemming from a guilty plea. See NRS 34.810(1)(a). Therefore, the district court did not err by denying relief for these claims.

Having concluded Lee is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

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

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

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

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