

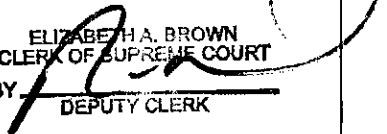
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JERRY RICHARD BROWN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74720-COA

**FILED**

FEB 12 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jerry Richard Brown appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus.<sup>1</sup> Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

In his October 5, 2017, petition and later-filed supplements, Brown claimed his counsel was ineffective. 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).

First, Brown claimed his counsel was ineffective for failing to object when the representative from the Division of Parole and Probation

---

<sup>1</sup>This 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).

informed the trial-level court that a psychosexual evaluation was not necessary in this matter. Brown failed to demonstrate his counsel's performance was deficient or resulting prejudice. Following entry of Brown's guilty plea, the trial-level court asked if it was necessary for Brown to undergo a psychosexual evaluation prior to sentencing. The representative responded that it was not necessary as Brown faced a mandatory prison sentence. Brown's counsel also informed the trial-level court he would not request such an evaluation prior to the sentencing hearing as he believed it would not be relevant to Brown at that time. Given counsel's statements concerning a psychosexual evaluation, Brown failed to demonstrate counsel's actions fell below an objective standard of reasonableness. *See Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) ("Tactical decisions are virtually unchallengeable absent extraordinary circumstances."). Brown failed to demonstrate a reasonable probability of a different outcome had counsel undertaken different actions concerning a psychosexual evaluation. Therefore, we conclude the district court did not err by denying this claim.

Second, Brown claimed his counsel was ineffective for advising him to enter a guilty plea despite failing to conduct an investigation into the facts of the case. Brown did not support this claim with specific facts and did not state what favorable evidence could have been uncovered through reasonably diligent investigation. Accordingly, Brown failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984); *see also Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming counsel did not conduct an adequate investigation must specify what a more thorough investigation would have

uncovered). Brown 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 an investigation. Therefore, we conclude the district court did not err by denying this claim.

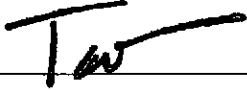
Third, Brown claimed his counsel was ineffective for failing to pursue a direct appeal. Brown failed to demonstrate that he was improperly deprived of a direct appeal. “[T]rial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction.” *Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011). In his petition, Brown did not claim he asked counsel to file an appeal and counsel failed to do so, and he did not allege he expressed the type of dissatisfaction which would have required counsel to file a notice of appeal. *See id.* at 978-79, 267 P.3d at 800-01. Therefore, we conclude the district court did not err by denying this claim.

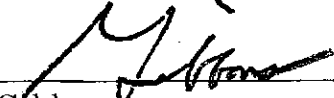
Fourth, Brown appeared to claim his counsel was ineffective for failing to object when the sentencing court imposed consecutive sentences. Brown failed to demonstrate his counsel’s performance was deficient or resulting prejudice. NRS 176.035(1) plainly gives the district court discretion to run subsequent sentences consecutively, *Pitmon v. State*, 131 Nev. 123, 129, 352 P.3d 655, 659 (Ct. App. 2015), and Brown failed to demonstrate objectively reasonable counsel would have objected to the exercise of that discretion. Brown failed to demonstrate a reasonable probability of a different outcome had counsel objected to the sentencing court’s imposition of consecutive sentences. Therefore, we conclude the district court did not err by denying this claim.

Next, Brown claimed the sentencing court abused its discretion by imposing consecutive sentences and conspired with the district attorney's office and the public defender against him. These claims were not based on an allegation that Brown'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 Brown is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, A.C.J.  
Douglas

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

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

---

<sup>2</sup>Brown also appeared to claim the district court erred by refusing to remove his counsel of record after the conclusion of the trial-level proceedings and the district court tried to cause his postconviction petition to be filed more than a year after entry of the judgment of conviction. A review of the record demonstrates these claims lack merit because the district court granted Brown's motion seeking the removal of counsel and Brown's petition was filed before the timely-filing deadline, see NRS 34.726(1).

In addition, we conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760-61 (2017).

cc: Hon. Thomas L. Stockard, District Judge  
Jerry Richard Brown  
Attorney General/Carson City  
Churchill County District Attorney/Fallon  
Churchill County Clerk