

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW WASHINGTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75777-COA

FILED

MAR 14 2019

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

ORDER OF AFFIRMANCE

Matthew Washington appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 19, 2017, and supplemental pleading filed on February 25, 2018.¹ Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

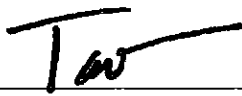
Washington claimed trial counsel was ineffective for failing to object to some of the evidence of his contacts with law enforcement that were introduced by the State at his penalty hearing. Washington failed to allege that, but for counsel's allegedly deficient performance, there was a reasonable probability of a different outcome at the sentencing hearing. See *Strickland v. Washington*, 466 U.S. 668, 687-88, 697 (1984) (holding that, to demonstrate a claim of ineffective assistance, a petitioner must show both that counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting

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


the test in *Strickland*). Because he failed to allege prejudice, Washington failed to raise claims supported by specific factual allegations that, if true and not repelled by the record, would entitle him to relief. We therefore conclude the district court did not err by denying this claim. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Washington claims for the first time on appeal that trial counsel was ineffective before and during trial. He also claims trial counsel should have objected to the State's introduction of tattoo evidence at his sentencing hearing. As these claims were not raised below, we decline to consider them on appeal in the first instance. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Tao


_____, J.
Gibbons


_____, J.
Bulla

cc: Hon. Susan Johnson, District Judge
Matthew Washington
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk