

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TROY RAY EMANUEL, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67255

FILED

APR 20 2016

FRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant Troy Ray Emanuel, Jr. first argues his prior postconviction counsel operated under a conflict of interest. On an appeal involving a postconviction petition for a writ of habeas corpus, this court generally declines to consider issues which 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 Emanuel did not assert his prior postconviction counsel had a conflict of interest in his petition and supplements before the district court. Because Emanuel does not demonstrate cause for his failure to raise this claim before the district court, we decline to consider it in this appeal. Therefore, Emanuel is not entitled to relief for this claim.

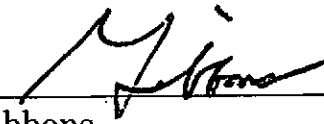
Second, Emanuel argues the district court erred by declining to continue the evidentiary hearing regarding his February 13, 2014, postconviction petition so as to permit one of his prior attorneys to testify. "This court reviews the district court's decision regarding a motion for continuance for an abuse of discretion." *Rose v. State*, 123 Nev. 194, 206,


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163 P.3d 408, 416 (2007). “[W]hen a [petitioner] fails to demonstrate that he was prejudiced by the denial of a continuance, the district court’s decision denying a continuance is not an abuse of discretion.” *Id.*

The record reveals that one of Emanuel’s pre-guilty-plea attorneys testified at the evidentiary hearing and the parties informed the district court the other attorney was out of the state. Emanuel requested a continuance to permit the other attorney to testify at the evidentiary hearing. The district court decided to conduct the hearing that day, and, following the evidentiary hearing testimony, concluded Emanuel’s claims lacked merit. On appeal, Emanuel merely speculates his other counsel could have provided additional information, and accordingly, fails to meet his burden to demonstrate he was prejudiced by the denial of the continuance request. Therefore, Emanuel is not entitled to relief for this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Nguyen & Lay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk