

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HUGO BALDOVINOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76761-COA

FILED

JUL 17 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Hugo Baldovinos appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 11, 2017, and a supplemental petition filed on November 21, 2017. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.


First, Baldovinos argues the district court erred by denying his claim that counsel was ineffective for failing to file a notice of appeal. Baldovinos claimed in his petition that he asked counsel to file a notice of appeal and counsel failed to do so. At the evidentiary hearing, counsel testified Baldovinos never told him he wanted to appeal his conviction. Baldovinos refused to testify at the evidentiary hearing.¹ The district court found Baldovinos failed to demonstrate he “made that request to file an appeal.” Substantial evidence supports the decision of the district court, *see Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011), and we conclude the district court did not err by denying this claim.


Second, Baldovinos argues the district court erred by denying his claim that his plea was not knowingly, voluntarily, and intelligently

¹We conclude the district court did not abuse its discretion by denying counsel’s motion to continue the hearing.

entered. Baldovinos claimed in his petition that he entered his plea “without a full understanding of what that plea entailed,” and then cited to a presentence motion to withdraw his plea for support. Because Baldovinos raised this exact claim in his presentence motion to withdraw his plea, and he could have raised this claim on direct appeal, this claim was waived. See *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (“[C]laims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings.”), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999). Therefore, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Law Office of Julian Gregory, L.L.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk