

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO CHAVEZ-JUAREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70383

FILED

FEB 23 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Antonio Chavez-Juarez appeals from an order of the district court denying his November 5, 2015, postconviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; David A. Hardy, Judge.

In his petition, Chavez-Juarez argued the trial court erred in admitting photographs of the child victim, his statements to the police were obtained in violation of his *Miranda*² rights, his sentence amounts to cruel and unusual punishment, there was insufficient evidence to support the convictions, and the victim advocate improperly coached the child victim during her testimony. The district court concluded these claims could have been raised on direct appeal and Chavez-Juarez did not

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

²*Miranda v. Arizona*, 384 U.S. 436 (1966).

demonstrate cause for the failure to do so and actual prejudice. *See* NRS 34.810(1)(b).

Chavez-Juarez appears to attempt to overcome the procedural bar by asserting on appeal he was not aware he had to raise those claims on direct appeal and asserts his appellate counsel was ineffective for failing to raise those claims on direct appeal. 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 Chavez-Juarez did not assert his appellate counsel was ineffective or otherwise attempt to demonstrate good cause for failing to raise claims on direct appeal in the petition before the district court. Because Chavez-Juarez did not assert these issues in the district court, we decline to consider them in this appeal.

Next, Chavez-Juarez argues the district court erred in declining to appoint postconviction counsel to represent him because he has a language barrier, he has to rely upon an inmate law clerk, and it would be a fundamental miscarriage of justice not to appoint counsel to represent him. The appointment of postconviction counsel was discretionary in this matter. *See* NRS 34.750(1); *Brown v. McDaniel*, 130 ___, ___, 331 P.3d 867, 870 (2014) (explaining “there is no constitutional or statutory right to the assistance of counsel in noncapital post-conviction proceedings”). After a review of the record, we conclude the district court did not abuse its discretion in this regard as this matter was not

sufficiently complex so as to warrant the appointment of postconviction counsel.

Chavez-Juarez also asserts he believed he did not need to raise all issues in his initial petition, he expected to raise additional claims in a supplemental petition, and the district court denied the petition without permitting Chavez-Juarez to file a supplement. To the extent Chavez-Juarez argues the district court erred by failing to permit him to file a supplemental petition, he is not entitled to relief. A petitioner may raise claims in his initial petition and, if the district court appoints postconviction counsel, in a supplemental pleading. NRS 34.724(1); NRS 34.750(3). All other pleadings may only be filed if ordered by the district court and the district court has broad authority with respect to permitting supplemental pleadings during postconviction proceedings. NRS 34.750(5); *State v. Powell*, 122 Nev. 751, 758, 138 P.3d 453, 458 (2006). Because the district court did not appoint postconviction counsel to represent Chavez-Juarez, he had no right to file a supplemental petition. Given the district court's broad authority with respect to permitting supplemental pleadings, Chavez-Juarez does not demonstrate the district court erred by denying the petition without permitting Chavez-Juarez to file a supplemental petition.

Finally, Chavez-Juarez argues the district court erred by denying his petition without conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations that are not belied by the record, and if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). The district court concluded Chavez-Juarez'

claims did not meet that standard and the record before this court reveals the district court's conclusions in this regard were proper. Therefore, the district court properly denied the petition without conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Silver, C.J.
Silver

Tao, J.
Tao

Gibbons, J.
Gibbons

cc: Hon. David A. Hardy, District Judge
Antonio Chavez-Juarez
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk