

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVE BALES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70115

**FILED**

APR 19 2017

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

*ORDER OF AFFIRMANCE*

Appellant Steve Bales appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; J. Charles Thompson, Senior Judge.

Bales argues the district court erred in denying his claims of ineffective assistance of counsel raised in his December 11, 2015, petition. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the

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

inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984).

First, Bales appeared to assert his counsel was ineffective for failing to pursue a direct appeal. Bales 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, Bales 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. Further, Bales specifically waived his right to appeal in the written plea agreement. Therefore, we conclude the district court did not err in denying this claim.<sup>2</sup>

Second, Bales argues his counsel was ineffective for requesting a new psychosexual evaluation and presentence investigation report (PSI). In addition, Bales asserts his counsel improperly withdrew from this case following the preparation of a new psychosexual evaluation and PSI. A review of the record before this court reveals Bales did not raise these ineffective assistance of counsel claims in the petition before the district court. In an appeal involving a postconviction petition for a writ of habeas

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<sup>2</sup>In his informal brief, Bales asserts he requested counsel to pursue a direct appeal and counsel declined to do so because he was not Bales’ attorney at that time. However, Bales did not assert these facts in his petition before the district court and we decline to consider new factual allegations raised for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

corpus, this court generally declines to consider issues which were not raised in the district court in the first instance. *See McNelton*, 115 Nev. at 416, 990 P.2d at 1276. Because Bales did not raise these claims before the district court, we decline to consider them in this appeal.

Next, Bales claimed the psychosexual evaluation and the PSI contained improper and inaccurate information. This claim was not based on an allegation that Bales' plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel, and therefore, was 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 in denying relief for this claim.<sup>3</sup>

Next, Bales argues the district court erred in denying the 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. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). The district court concluded Bales' claims did not meet that standard and the record before this court demonstrates the district court's conclusions in this regard were proper because Bales' claims would not have entitled him to relief. Therefore, the district court properly denied the petition without conducting an evidentiary hearing.

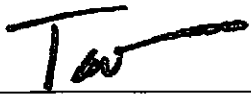
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<sup>3</sup>To the extent Bales asserts he should be permitted to withdraw his guilty plea due to errors contained in the psychosexual evaluation or the PSI, he failed to demonstrate withdrawal of his plea was necessary to correct a manifest injustice. *See* NRS 176.165.

Finally, Bales appears to argue the district court erred in declining to appoint postconviction counsel to represent him. The appointment of postconviction counsel was discretionary in this matter. See NRS 34.750(1). 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. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

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

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

cc: Chief Judge, Eighth Judicial District Court  
Hon. J. Charles Thompson, Senior Judge  
Steve Bales  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk