

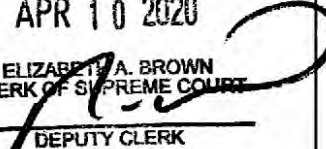
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GIOVANNI KOHLER KURTZE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79258-COA

FILED

APR 10 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Giovanni Kohler Kurtze appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Kurtze argues the district court erred by denying a claim of ineffective assistance of counsel he raised in his March 13, 2019, petition. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate 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 that, 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, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984).

In his petition, Kurtze claimed his counsel was ineffective for failing to demonstrate that he was incompetent and under the influence of

prescription medication. Kurtze asserted he was unable to enter a knowing and voluntary guilty plea due to those issues. The record demonstrates Kurtze was evaluated for competency and he was found to be competent. A short time later, Kurtze entered a guilty plea and asserted he understood the plea agreement and entered a guilty plea voluntarily. In the written plea agreement, executed after he was found to be competent, Kurtze asserted he was not under the influence of any controlled substance or other drug that would impair his ability to understand the proceedings. Given the record, Kurtze failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to enter a guilty plea and would have insisted on proceeding to trial had counsel performed different actions concerning his competency. Therefore, we conclude the district court did not err by denying this claim.¹

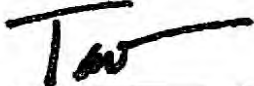
Next, Kurtze appears to argue he is entitled to monetary damages, his counsel failed to discuss a self-defense strategy, his mail has been lost, he can only be criminally charged by the Senate or the Vatican, the district court improperly refused to provide funds for a phone call to an attorney, and the Nevada Supreme Court improperly dismissed a prior appeal for lack of jurisdiction. However, Kurtze did not raise these claims

¹To the extent Kurtze also asserted he should be permitted to withdraw his guilty plea because it was not knowingly and voluntarily entered due to competency issues and his use of prescription medication, he failed to demonstrate withdrawal of his guilty plea was necessary to correct a manifest injustice. See NRS 176.165.

in his petition below and we decline to consider them in the first instance on appeal. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Giovanni Kohler Kurtze
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk