

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OTIS STEPHEN BYROM,  
Appellant,  
vs.  
BRIAN WILLIAMS, WARDEN,  
Respondent.

No. 78889-COA

**FILED**

APR 17 2020

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

*ORDER OF AFFIRMANCE*

Otis Stephen Byrom appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on February 12, 2019. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

First, Byrom claimed counsel was effective for advising him that he would be eligible for probation when in fact probation was not available for his offenses. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show (1) counsel's performance was deficient in that it fell below an objective standard of reasonableness and (2) a reasonable probability, but for counsel's errors, he 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 ineffective-assistance inquiry—deficiency and prejudice—must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). Byrom did not allege or show that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial.

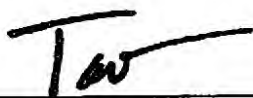
Therefore, we conclude the district court did not err by denying his ineffective-assistance-of-counsel claim.

Second, Byrom claimed the State breached the guilty plea agreement at sentencing by arguing for prison terms despite the fact that he received a favorable psychosexual evaluation that certified he was a low to average risk to reoffend. “[C]laims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings.” *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999). We conclude the district court did not err by denying Byrom’s breach-of-plea-agreement claim because Byrom waived this claim by not raising it on direct appeal.

Third, Byrom claimed he was entitled to an evidentiary hearing on the claims he raised in his petition. We review a district court’s decision not to hold an evidentiary hearing for abuse of discretion. *Berry v. State*, 131 Nev. 957, 969, 363 P.3d 1148, 1156 (2015). A district court may reject a claim without conducting an evidentiary hearing when the claim (1) is belied by the record; (2) is not supported by specific facts, that, if true, would entitle petitioner to relief; or (3) is procedurally barred and the petitioner has failed to overcome the procedural bar. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008). Byrom’s ineffective-assistance-of-counsel claim was not supported by specific facts, that, if true, would have entitled him to relief, and his breach-of-plea-agreement claim was waived. Therefore, we conclude the district court did not err by rejecting his claims without an evidentiary hearing.

Having concluded Byrom is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Stefany Miley, District Judge  
Otis Stephen Byrom  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>The district court erred by resolving Byrom's claims on the bases that defense counsel and the written guilty plea agreement correctly informed Byrom that he was eligible for probation and that the district court had discretion to grant Byrom probation. However, Byrom was not eligible for probation because he was pleading guilty to attempted sexual assault of a child under 16 years of age. See NRS 176A.100(1)(a). Nevertheless, because we conclude Byrom was not entitled to relief on either of these claims, we affirm the district court's denial of these claims. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).