

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GEORGE BURRELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79863-COA

FILED

SEP 04 2020

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

ORDER OF AFFIRMANCE

George Burrell appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on March 27, 2019. Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

First, Burrell claims the district court erred by denying his petition because standby counsel was ineffective for failing to adequately investigate and prepare prior to his plea of guilty. A defendant who has waived his right to counsel and chosen to represent himself does not have a constitutional right to standby counsel. *Harris v. State*, 113 Nev. 799, 804, 942 P.2d 151, 155 (1997) (citing *United States v. Kienenberger*, 13 F.3d 1354, 1356 (9th Cir. 1994)). And because such a defendant does not have a constitutional right to standby counsel, he does not have a right to effective assistance of standby counsel. *See United States v. Morrison*, 153 F.3d 34, 55 (2nd Cir. 1998); *see also Faretta v. California*, 422 U.S. 806, 834 n.46 (1975) (“[A] defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of

‘effective assistance of counsel.’”); see generally *McKague v. Warden*, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996) (a postconviction petitioner who has no constitutional or statutory right to the appointment of counsel has no right to the effective assistance of postconviction counsel). Therefore, we conclude the district court did not err by rejecting this claim.

Second, Burrell claims the district court erred by denying his petition because standby counsel was ineffective for “overlook[ing] several motions which he should have aided the defendant in filing.” Because Burrell was not entitled to effective assistance of standby counsel, we conclude the district court did not err by rejecting this claim.

Third, Burrell claims the district court erred by denying his petition because the cumulative effect of standby counsel’s errors require reversal. Because Burrell was not entitled to the effective assistance of standby counsel, we conclude there was nothing to cumulate and the district court did not err by rejecting this claim.

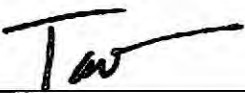
Fourth, Burrell claims the district court erred by denying his petition without conducting an evidentiary hearing. We review a district court’s decision not to conduct an evidentiary hearing for abuse of discretion. *Berry v. State*, 131 Nev. 957, 969, 363 P.3d 1148, 1156 (2015). A district court may reject a claim without conducting an evidentiary hearing when the claim is not supported by specific facts that, if true, would entitle petitioner to relief. *Rubio v. State*, 124 Nev. 1032, 1046, 194 P.3d 1224, 1233-34 (2008). Because Burrell did not allege facts that would have

entitled him to relief, we conclude the district court did not abuse its discretion by rejecting his claims without an evidentiary hearing.

Having concluded Burrell is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Cristina D. Silva, District Judge
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk