

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PHILLIP JAMES KING,  
Appellant,  
vs.  
ISIDRO BACA, WARDEN, NNCC; AND  
THE STATE OF NEVADA,  
Respondents.

No. 80104-COA

FILED

OCT 09 2020

ELIZABETH J. THOMAS  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Phillip James King appeals from a district court order granting a motion to dismiss a postconviction petition for a writ of habeas corpus filed on April 4, 2019. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

King claims that the district court erred by dismissing his petition because defense counsel was ineffective. "Where [a petitioner] has pleaded guilty, the only claims that may be raised thereafter are those involving the voluntariness of the plea itself and the effectiveness of counsel." *Kirksey v. State*, 112 Nev. 980, 999, 923 P.2d 1102, 1114 (1996). To state a claim of ineffectiveness 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).

The petitioner must show both components of the ineffective assistance inquiry—deficiency and prejudice, *Strickland v. Washington*, 466 U.S. 668, 697 (1984), and the petitioner must demonstrate the underlying facts of his claim by a preponderance of the evidence. *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court’s factual findings regarding ineffective assistance of counsel if they are supported by substantial evidence and not clearly wrong but review the district court’s application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).


King specifically argued that his retained counsel, Jeb W. Bond, was ineffective for failing to investigate the lawfulness of the police detectives’ search of his storage unit. However, the record demonstrates that Bond was allowed to withdraw from King’s case, Deputy Public Defender Lynn Branzell was appointed to take Bond’s place, King entered his guilty plea *solely* on Branzell’s advice, and King did not argue that Branzell’s advice was deficient.<sup>1</sup> We conclude King has not demonstrated any “probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial,” *Hill*, 474 U.S. at 59, and


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<sup>1</sup>To the extent King claims that “appointed counsel” failed to investigate and develop information that would assist her in advising him on whether to proceed to trial or accept the State’s plea offer, this claim was not raised in the court below, and we decline to consider it for the first time on appeal. See *Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means*, 120 Nev. at 1012-13, 103 P.3d at 33.

therefore, the district court did not err by dismissing his petition.  
Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

cc: Hon. Lynne K. Simons, District Judge  
Phillip James King  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>2</sup>To the extent King claims the district court erred by imposing “a sentence that went beyond the plea agreement that the public defender and the prosecutor had promised the appellant in exchange for his guilty plea,” this claim was not raised in the court below and we decline to consider it for the first time on appeal. *See Davis*, 107 Nev. at 606, 817 P.2d at 1173.