

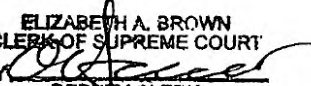
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BILLY JOVAN SAIZ, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84318-COA

FILED

FEB 23 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Billy Jovan Saiz, Jr., appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 20, 2021. Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

In his petition, Saiz argued the State breached the plea agreement by arguing for the habitual criminal enhancement at sentencing. This claim was waived because it could have been raised on appeal from Saiz's judgment of conviction. *See 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). Therefore, we conclude the district court did not err by denying this claim.

Moreover, as a separate and independent ground to deny relief, Saiz failed to demonstrate that the State breached the plea agreement. In the plea agreement, the State agreed not to request the habitual criminal enhancement at sentencing in exchange for Saiz's guilty plea. However, Saiz also agreed that if "an independent magistrate, by affidavit review,

confirms probable cause against [him] for new criminal charges . . . , the State will have the unqualified right to argue for any legal sentence.” Specifically, the agreement allowed the State to argue for habitual criminal punishment at sentencing if Saiz committed a new offense between entering the plea and sentencing.

After entering the plea and prior to sentencing, Saiz was arrested for the crime of high-level trafficking of controlled substances, and probable cause was found by a magistrate. Therefore, under the terms of the plea agreement, the State was allowed to seek the habitual criminal enhancement at sentencing. Thus, Saiz failed to demonstrate the State breached the plea agreement.

Saiz also argued his plea was not knowingly, voluntarily, and intelligently entered because the State breached the plea agreement by arguing for the habitual criminal enhancement to be imposed. As discussed above, the State did not breach the plea agreement by arguing for the enhancement. Further, Saiz failed to allege specific facts that showed that the plea was otherwise not knowingly, voluntarily, or intelligently entered.¹ Therefore, we conclude the district court did not err by denying this claim. See *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (affirming the denial of a motion to withdraw plea where the motion was

¹Saiz argues on appeal that the clause in his plea agreement regarding new criminal charges was vague. This claim was not raised below, and we decline to consider it for the first time on appeal. See *McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

“unsupported by any specific factual allegations that would, if true, have entitled him to withdrawal of his plea”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jasmin D. Lilly-Spells, District Judge
Billy Jovan Saiz, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk