IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHAN ANDREW MILLIKEN,
Appellant,
vs.
BRIAN WILLIAMS, WARDEN AND THE STATE OF NEVADA,
Respondents.

No. 89380-COA

ORDER OF AFFIRMANCE

Jonathan Andrew Milliken appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on August 29, 2023, and a supplemental petition filed on February 20, 2024. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Milliken argues the district court erred by denying his petition without conducting an evidentiary hearing. Milliken first contends the district court erred by denying his claim that trial-level counsel was ineffective for failing to object to the victim's statements at sentencing or request an evidentiary hearing to refute the victim's false statements. The appendix submitted by Milliken does not include a copy of the sentencing transcript, and this document is necessary to review the district court's conclusion that trial-level counsel was not ineffective at sentencing. *See* NRAP 30(b)(1); NRAP 30(b)(3). Because Milliken does not include a necessary portion of the record for our review, he fails to demonstrate the district court erred by denying this claim without conducting an evidentiary hearing. *See Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."); *see also Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary

documentation in the record, we necessarily presume that the missing portion supports the district court's decision.").

Next, Milliken contends the district court erred by denying his claim that his sentence was imposed under unduly inflamed passions and prejudice because the State knowingly presented false testimony from the victim. The district court determined this claim was outside the scope of claims permissible in a postconviction habeas petition challenging a judgment of conviction based on an *Alford*[1] plea and was waived because it could have been raised on direct appeal. *See* NRS 34.810(1)(a) (stating a postconviction habeas petition stemming from a guilty plea must be dismissed if it "is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without the effective assistance of counsel"); *see also Gonzales v. State*, 137 Nev. 398, 403-04, 492 P.3d 556, 562 (2021) (allowing claims that counsel was ineffective at sentencing in a postconviction petition for a writ of habeas corpus following a guilty plea); *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (providing that claims "that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999). On appeal, Milliken does not argue that this claim challenged the validity of his plea or alleged the ineffective assistance of counsel. Therefore, we conclude the

[1]*North Carolina v. Alford*, 400 U.S. 25 (1970). We note that an *Alford* plea is the equivalent to a guilty plea insofar as how the court treats a defendant. *State v. Lewis*, 124 Nev. 132, 133 n.1, 178 P.3d 146, 147 n.1 (2008), *overruled on other grounds by State v. Harris*, 131 Nev. 551, 556, 355 P.3d 791, 793-94 (2015).

district court did not err by denying this claim without conducting an evidentiary hearing.[2]

Milliken also argues the district court erred by merely reciting the content of the State's responding brief in its order denying his petition instead of making its own findings of fact and conclusions of law. At a hearing on Milliken's petition, the district court stated that it was denying the petition "as set forth in the State's Response" and instructed the State to prepare the written order. A district court may request a party to submit proposed findings of facts and conclusions of law, *see Byford v. State*, 123 Nev. 67, 69, 156 P.3d 691, 692 (2007), and the district court ordered the State to prepare the written order in accordance with the local rules, *see* EDCR 1.90(a)(4) (stating "the prevailing party shall submit a written order to the judge"); EDCR 7.21 (requiring the prevailing party to provide the court with a draft order or judgment). Further, because Milliken fails to demonstrate he was entitled to relief for the reasons discussed above, we conclude he fails to demonstrate the alleged error impacted his substantial rights. *See* NRS 178.598. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

[2]To the extent Milliken raises claims on appeal that were not raised in his pleadings below, we decline to consider any such claims in the first instance. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989).

cc: Hon. Mary Kay Holthus, District Judge
Attorney General/Carson City
Clark County District Attorney
The Law Firm of C. Benjamin Scroggins, Chtd.
Eighth District Court Clerk