

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TANAGA RAVELL MILLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 77160-COA

**FILED**

**MAY 11 2020**

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

*ORDER OF AFFIRMANCE*

Tanaga Ravell Miller appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 7, 2017, and supplemental petition filed on February 12, 2018. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Miller contends the district court erred by denying his claim that trial-level counsel was ineffective for failing to seek a competency evaluation. To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability petitioner 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 inquiry must be shown, *Strickland v. Washington*, 466 U.S. 668, 697 (1984), and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

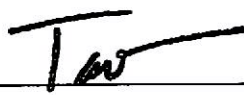
Miller claimed he told counsel of the head trauma he suffered during the crime and that he was on psychotropic medication. He claimed

that, based on this information, counsel should have sought a competency evaluation. Miller failed to allege specific facts that, if true and not belied by the record, would demonstrate counsel should have questioned Miller's competency. Specifically, he did not claim he lacked the ability to understand the nature and purpose of the criminal charges and the court proceedings or to aid and assist counsel in his defense with a reasonable degree of rational understanding. See NRS 178.400(2) (defining "incompetent"); *Melchor-Gloria v. State*, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) (setting out the standard for competency). Moreover, Miller failed to demonstrate by a preponderance of the evidence at the evidentiary hearing that he would have been found incompetent. We therefore conclude the district court did not err by denying this claim.

Miller also raises several arguments on appeal that he did not raise below: the district court lacked jurisdiction over his case, the district court should have ordered a competency evaluation, Miller was incompetent during postconviction proceedings, and counsel should have arranged for the guilty plea to be conditional. We decline to consider these issues that are raised for the first time on appeal. See *McNelson v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Carolyn Ellsworth, District Judge  
Law Office of John G. George  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk