

Filed 5/16/19 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2019 ND 116

Thomas Jeames Keller,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

No. 20180391

Appeal from the District Court of Morton County, South Central Judicial District, the Honorable Cynthia M. Feland, Judge.

AFFIRMED.

Per Curiam.

Scott O. Diamond, Fargo, ND, for petitioner and appellant; submitted on brief.

Brian D. Grosinger, Assistant State's Attorney, Mandan, ND, for respondent and appellee; submitted on brief.

Keller v. State
No. 20180391

Per Curiam.

[¶1] Thomas Jeames Keller appealed from a district court order denying his application for post-conviction relief. Keller argues the district court erred in denying his application for post-conviction relief because Keller was prejudiced by ineffective assistance of counsel when his attorney failed to obtain a pre-sentence investigation report prior to sentencing. We summarily affirm under N.D.R.App.P. 35.1(a)(7) because Keller did not show there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *See Booth v. State*, 2017 ND 97, ¶ 13, 893 N.W.2d 186 (a defendant who pleads guilty knowingly and voluntarily cannot show in what manner actual prejudice resulted from his trial counsel's failure to investigate more thoroughly).

[¶2] Gerald W. VandeWalle, C.J.
Jerod E. Tufte
Daniel J. Crothers
Lisa Fair McEvers
Jon J. Jensen