

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMAAL JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52693

FILED

SEP 29 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant raises several claims that trial counsel was ineffective for: failing to challenge evidence at trial, failing to adequately investigate facts and circumstances, advising appellant to waive his right to have the jury determine his sentence, failing to negotiate a plea deal, failing to request a polling of the jury despite knowledge of juror misconduct, and failing to request a continuance of trial.¹ Appellant fails to allege specific facts that, if true, entitle him to relief, Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984), and thus fails to

¹We note that appellant is represented in this appeal by the same counsel that represented him on direct appeal and in his motion for new trial. It appears that appellant knowingly waived this conflict of interest by signing a document that explained to him the rights he was giving up. Further, the district court held a hearing on this issue and was satisfied by appellant's counsel that appellant authorized counsel to file the petition on his behalf.

demonstrate he received ineffective assistance of counsel. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984). Further, appellant fails to demonstrate that he was entitled an evidentiary hearing on these issues. See Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Therefore, the district court did not err in denying these claims.


Next, appellant raises numerous claims that were previously raised in his direct appeal, his motion for new trial, or on appeal from his motion for new trial: the district court erred by admitting appellant's confession, the district court erred when it instructed the jury on the theories of liability and the deadly weapon enhancement, and appellant was deprived of a fair trial because of prosecutorial misconduct and violations of Brady v. Maryland, 373 U.S. 83 (1963). These claims were considered and rejected in the prior proceedings. The doctrine of law of the case prevents further litigation of these issues and cannot be avoided by more detailed and precisely focused arguments made upon reflection of prior proceedings. Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 799 (1975). Accordingly, the district court did not err in denying these claims.


Finally, it appears that appellant claims that the district court erroneously instructed the jury on vicarious co-conspirator liability because murder is a specific intent crime and the instructions did not state that he had to have specific intent. Appellant argues that he has good cause to raise this claim in this petition because Bolden v. State, 121 Nev. 908, 921, 124 P.3d 191, 199-200 (2005) receded from by Cortinas v. State, 124 Nev. ___, 195 P.3d 315 (2008), was decided after his direct appeal and this is the first proceeding in which he could raise claims pertaining to that case. See NRS 34.810(1)(b).


Assuming without deciding that appellant has good cause to raise this argument, appellant fails to demonstrate that he will be prejudiced by dismissal of this claim. Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993). It does not appear that appellant received the “natural and probable consequences” instruction that was at issue in Bolden. But, it does appear that the instructions did not require the jury to find that appellant had participated in the conspiracy with the intent to commit murder. Therefore, it appears that the jury instructions did not comply with the dictates of Bolden, 121 Nev. at 921, 124 P.3d at 199-200. However, in addition to first-degree murder, the jury also found appellant guilty beyond a reasonable doubt of burglary and robbery. As provided by NRS 200.030(1)(b), murder in the first degree includes any murder “[c]ommitted in the perpetration or attempted perpetration of . . . robbery [or] burglary.” Thus, as the victims died in the perpetration of the burglary and robbery, appellant was clearly guilty of felony murder pursuant to NRS 200.030(1)(b). Accordingly, any errors in the jury instructions related to vicarious liability were harmless beyond a reasonable doubt. Cortinas v. State, 124 Nev. at ___, 195 P.3d at 324 (noting that if a jury does not receive the appropriate instruction regarding specific intent, a defendant’s conviction must be reversed unless the district court’s failure to instruct the jury was harmless beyond a reasonable doubt). Because the failure to include a specific intent instruction with respect to vicarious liability was harmless, appellant cannot demonstrate a reasonable probability that the result of the trial would have been different had the jury been correctly instructed on vicarious liability and specific intent. To the extent that appellant claims that he received ineffective assistance of counsel regarding trial counsel’s

failure to object to the jury instructions, appellant failed to demonstrate a reasonable probability of a different outcome had counsel objected. Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Clark Co. Clerk
Attorney General/Carson City
Clark County District Attorney
Law Office of Lisa Rasmussen