

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUSSELL STEWART KEITHLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53928

**FILED**

MAY 07 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Russell Stewart Keithley's post-conviction petition for a writ of habeas corpus filed pursuant to Lozada v. State, 110 Nev. 349, 359, 871 P.2d 944, 950 (1994). Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Keithley contends the district court erred by finding that the Lozada remedy is not inadequate as a matter of law. We have repeatedly rejected this contention and Keithley has failed to persuade us to conclude otherwise. See Gebbers v. State, 118 Nev. 500, 505, 50 P.3d 1092, 1095 (2002) (approving of the Lozada remedy for meritorious appeal-deprivation claims); see also Evitts v. Lucey, 469 U.S. 387, 399 (1985) (expressing approval of a state court's use of a "post-conviction attack on the trial judgment as the appropriate remedy for frustrated right of appeal" (internal quotation marks omitted)). Therefore, we conclude that the district court did not err by denying this claim.

Keithley also contends the district court erred by rejecting his claim that his guilty plea was not entered freely and voluntarily due to the ineffective assistance of counsel. As the district court noted in its order

denying Keithley's petition, we previously considered and rejected this claim and the doctrine of the law of the case precludes further litigation of the issue. Keithley v. State, Docket No. 48099 (Order Affirming in Part, Reversing in Part and Remanding, November 8, 2007); Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, we conclude that the district court did not err by denying this claim.

Accordingly, we conclude that Keithley is not entitled to relief and we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Michelle Leavitt, District Judge  
Christopher R. Oram  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk