

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON E. WALKUP,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54201

FILED

DEC 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Anderson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Jason Walkup's amended post-conviction petition for a writ of habeas corpus filed pursuant to Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994). Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

Walkup was convicted, pursuant to a guilty plea, of robbery with the use of a deadly weapon, conspiracy to commit a crime, and possession of a stolen vehicle. He did not pursue a direct appeal. Walkup timely filed a post-conviction petition for a writ of habeas corpus in the district court. The district court conducted a limited evidentiary hearing and denied the petition. On appeal, this court affirmed the district court's decision in part but remanded with instructions to allow Walkup to file a habeas petition to raise direct appeal claims pursuant to Lozada because he had been deprived of his right to a direct appeal due to ineffective assistance of counsel. Walkup v. State, Docket No. 50945 (Order Affirming in Part, Reversing in Part and Remanding, June 9, 2008). On

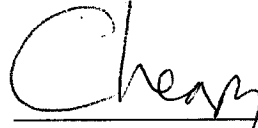
remand, the district court considered Walkup's amended petition and denied relief. This appeal followed.


Walkup first argues that the district court erred in rejecting his claim that his guilty plea was not knowingly, voluntarily and intelligently entered because counsel misinformed him about the sentence that he faced. This claim is barred by the law of the case because this claim was raised in the original petition and this court affirmed the district court's previous denial of this claim. Id. Walkup cannot avoid the law of the case by presenting additional evidence that he failed to present in the prior proceedings. See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).


Walkup next argues that the district court erred in rejecting his claim that the amended second superseding indictment to which he entered a guilty plea was invalid because it did not name the correct defendant. This claim lacks merit for two reasons. First, although the charging document identifies one of the other codefendants in the first paragraph, the caption and the three charges specifically identify Walkup as the defendant and specify the theories under which Walkup was charged. See 173.075. Contrary to Walkup's claims, the charging document does not suffer from the same deficiencies addressed in State v. Hancock, 114 Nev. 161, 955 P.2d 183 (1998). Second, this claim was raised as a direct appeal claim under Lozada but it would not have been grounds for relief on direct appeal from the judgment of conviction because Walkup waived any errors in the indictment as a result of his guilty plea. See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975); Tollett v. Henderson, 411 U.S. 258 (1973).

Having considered Walkup's claims and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. James M. Bixler, District Judge
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk