

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD KWAME GAINES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54890

FILED

JUN 09 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Ronald Kwame Gaines' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

First, Gaines contends that trial counsel was ineffective for (1) failing to challenge the district court's decision to adjudicate him as a habitual criminal and (2) requesting a battery instruction as a lesser-included offense rather than as a theory of the defense. Gaines also contends that appellate counsel was ineffective for failing to (1) challenge the habitual criminal adjudication on additional grounds and (2) allege that the prosecutor committed misconduct during closing arguments. Notably, Gaines does not specifically address or challenge the district court's findings in denying his petition.

When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if they are supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Here, the district court found that trial counsel was not deficient and our

review of the record reveals that Gaines failed to demonstrate prejudice. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984). The district court also found that appellate counsel was not ineffective and that Gaines' claims did not have a reasonable probability of success on appeal. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). The district court's findings are supported by substantial evidence and are not clearly wrong, and Gaines has not demonstrated that the district court erred as a matter of law. Therefore, we conclude that the district court did not err by rejecting Gaines' ineffective-assistance claims.

Second, Gaines contends that the district court erred at sentencing by adjudicating him as a habitual criminal. This claim was improperly raised below. See NRS 34.810(1)(b)(2). Moreover, we previously considered and rejected this claim on direct appeal, (Gaines v. State, Docket No. 47547 (Order of Affirmance, March 5, 2008)), and the doctrine of the law of the case precludes further litigation of the issue, Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

Having considered Gaines' contentions and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Doug Smith, District Judge
Ronald Kwame Gaines
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk