

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD DEAN HODSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55548

FILED

SEP 29 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Richard Dean Hodson's timely post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Hodson contends that the district court abused its discretion by procedurally barring his claims that (1) NRS 202.840 is overbroad or vague and (2) the district court did not properly instruct the jury. Hodson's overbroad or vague claim is procedurally barred because he did not plead or demonstrate in the district court that an impediment external to the defense prevented him from complying with procedural default rules, see NRS 34.810(1)(b)(2), (3); Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003), or make a colorable showing of actual innocence which might excuse the failure to demonstrate good cause under the fundamental miscarriage of justice standard, Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Hodson's jury instruction claim is barred by the doctrine of the law of the case because it was raised and resolved on direct appeal. See Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99

(1975). Accordingly, Hodson has not shown that the district court abused its discretion by dismissing these claims. Because the district court correctly determined that these claims were procedurally barred, we will not consider the merit of these claims.

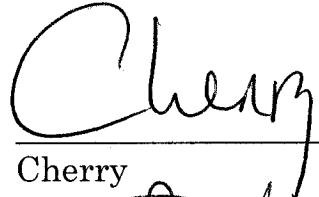
Hodson also contends that the district court abused its discretion by denying his claim that trial counsel was ineffective for not proposing a “reasonable person” instruction in support of his theory of defense, and his claims that both trial counsel and appellate counsel were ineffective for failing to address an alleged instance of prosecutorial misconduct.¹ When reviewing the district court’s resolution of an ineffective-assistance claim, we give deference to the court’s factual findings if 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). During a hearing on the petition, Hodson informed the district court that he was not requesting an evidentiary hearing. The district court found that trial counsel had presented his theory of defense during closing argument, noted that the prosecutorial misconduct issue had been addressed on direct appeal, and concluded that Hodson had not demonstrated that counsel were ineffective. We conclude that Hodson has not demonstrated that he was prejudiced by counsels’ representation or that the district court erred as a matter of law. See Strickland v. Washington, 466 U.S.

¹To the extent that Hodson claims that the prosecutor failed to prove every element of the charge beyond a reasonable doubt, we note that he challenged the sufficiency of the evidence on direct appeal and conclude that this claim is barred by the doctrine of the law of the case. See Hall, 91 Nev. at 315-16, 535 P.2d at 798-99.

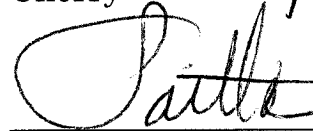
668, 687 (1984) (establishing two-part test for ineffective assistance of counsel); Kirksey v. State, 112 Nev. 980, 987-88 & 998, 923 P.2d 1102, 1107 & 1113 (1996).

Having considered Hodson's contentions 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. David B. Barker, District Judge
The Eighth District Court Clerk
Sarah A. Smith
Attorney General/Carson City
Clark County District Attorney