


IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID LEE TURNER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56561

**FILED**

**MAY 09 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

On April 13, 2010, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. In his petition, appellant raised several claims that were or could have been raised on direct appeal and two claims of ineffective assistance of counsel. The State filed an opposition to the petition on June 10, 2010. Appellant submitted a response to the opposition on July 6, 2010, in an apparent effort to expand the number of claims of ineffective assistance of counsel. In an order entered on July 29, 2010, the district court denied the claims as set forth in the original petition and did not consider appellant's claims as expanded by his response. This appeal followed.

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<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

Preliminarily, we conclude that the district court did not abuse its discretion in rejecting the expansion of claims set forth in appellant's July 6, 2010 response. Because post-conviction counsel was not appointed and because the State did not file a motion to dismiss the petition, NRS 34.750(1), (4), permission was required from the district court for the submission of further pleadings to the petition. NRS 34.750(5). In the instant case, the district court did not provide permission for further pleadings and limited the claims to be considered to those raised in the original petition. Consequently, our review is limited to those claims raised in the original petition.

In his petition, appellant claimed that his trial counsel was ineffective. To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). Both components of the inquiry must be shown, Strickland, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

First, appellant claimed that trial counsel was ineffective for failing to object to Detective Hubbard's testimony. In particular, appellant identified testimony regarding the location of the bag containing the wigs and firearm. Appellant failed to demonstrate that he was prejudiced by trial counsel's failure to object to or cross-examine Detective Hubbard about the location of the bag given the overwhelming evidence that

appellant was in constructive possession of the firearm. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that trial counsel was ineffective for failing to investigate evidence that could potentially exonerate appellant. Appellant failed to identify any such evidence, and thus he failed to demonstrate that there was a reasonable likelihood of a different result at trial had trial counsel done further investigation. Therefore, we conclude that the district court did not err in denying this claim.


Next, appellant claimed that the district court erred in denying his motion to stipulate to ex-felon status. This court considered and rejected this argument on direct appeal, determining that the district court erred but that any error was harmless in light of the overwhelming evidence of appellant's guilt. The doctrine of the law of the case prevents further litigation of this issue and cannot be avoided by a more detailed and precisely focused argument. Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Therefore, we conclude that the district court did not err in denying this claim.

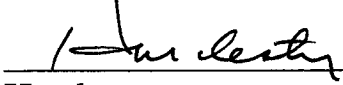
Next, appellant claimed that there was insufficient evidence he possessed a deadly weapon. Because this court already determined that there was overwhelming evidence of guilt on direct appeal, the doctrine of the law of the case applies to bar further litigation of this claim. Id.

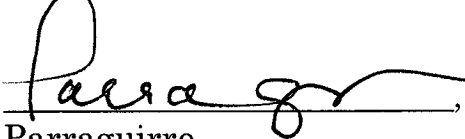
Finally, appellant claimed that the crime scene analyst should not have been allowed to testify about the partial fingerprint found on the firearm and his Fourth Amendment rights were violated. Appellant

waived these claims as he should have raised them on direct appeal and failed to demonstrate good cause for his failure to do so.<sup>2</sup> NRS 34.810(1)(b). Therefore, we conclude that the district court did not err in denying these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.  
Saitta

 \_\_\_\_\_, J.  
Hardesty

 \_\_\_\_\_, J.  
Parraguirre

cc: Hon. Stefany Miley, District Judge  
David Lee Turner  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>To the extent that appellant did raise a claim relating to the partial fingerprint on direct appeal, the doctrine of the law of the case would also apply to bar further litigation of this claim. Id.