

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH COUNTS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57217

FILED

JUL 15 2011

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

ORDER OF AFFIRMANCE


This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

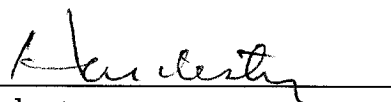
On appeal, appellant claims that the district court erred in denying his claims of ineffective assistance of counsel based on the doctrine of law of the case and because appellate counsel waived them. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal. See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Contrary to appellant's claim, the district court did not deny his ineffective-assistance-of-counsel claims based on the doctrine of law of the case and waiver. Rather, the district court denied his claims that had previously been raised on direct appeal on the basis of doctrine of law of the case, see Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975), and denied his claims that should have been raised on direct appeal on the basis that they were waived. See NRS 34.810(1)(b); Pellegrini v. State, 117 Nev. 860, 868, 34 P.3d 519, 525 (2001). The district court denied appellant's ineffective-assistance-of-counsel claims because it found that counsel was not

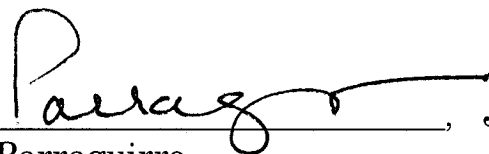
ineffective. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984) (establishing two-part test for evaluating claims of ineffective assistance counsel); Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (counsel is not ineffective for refusing to make futile objections); Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (claims must be supported by specific facts that, if true, would entitle the petitioner to relief). Appellant has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, appellant has not demonstrated that the district court erred as a matter of law. Therefore, the district court did not err in denying appellant's ineffective-assistance-of-counsel claims.

Appellant also claims that the district court erred by denying his claims that the State improperly sought habitual criminal status and that the district court erred when it sentenced appellant pursuant to the habitual criminal enhancement. As noted above, the district court denied these claims based on the doctrine of law of the case and waiver. To the extent these claims were not raised on direct appeal, appellant failed to demonstrate good cause and prejudice to overcome the procedural bar. NRS 34.810(1); NRS 34.810(3). Therefore, 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. Valerie Adair, District Judge
Michael H. Schwarz
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk