

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL JOSEPH RUDOLPHO, JR.
A/K/A SAMUEL RUDOLPHO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58081

FILED

NOV 17 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingersoll
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.¹ Eighth Judicial District Court, Clark County; Michael Villani, Judge.

In his petition, filed on December 15, 2010, appellant claimed that he received ineffective assistance of counsel.² To prove ineffective

¹This 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).

²Appellant also raised numerous claims that were previously raised on direct appeal: the district court erred by giving misleading and prejudicial jury instructions, the district court erred by awarding restitution without evidentiary support, the district court erred by chastising defense counsel in front of the jury, the district court erred by imposing habitual criminal adjudication, the State failed to prove the
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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). We give deference to the district court's factual findings regarding ineffective assistance of counsel 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).

First, appellant claimed that counsel was ineffective for failing to object to the jury instructions regarding felony convictions and the valuation of the stolen property. The underlying claims were raised and

... continued

property was worth \$250 or more, his sentence was cruel and unusual, and the information and charging document failed to state essential facts and violated notice requirements. These claims are barred by the doctrine of law of the case, which "cannot be avoided by a more detailed and precisely focused argument." Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975), and the district court did not err in denying them.

rejected on direct appeal. Because this court already concluded that appellant's underlying claims lacked merit, appellant necessarily failed to demonstrate prejudice from counsel's failure to object to these instructions. Therefore, the district court did not err in denying these claims.

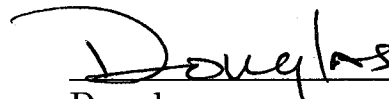
Second, appellant claimed that counsel was ineffective for failing to argue that the jury should have been instructed in the alternative regarding grand larceny and possession of stolen property. On appeal, this court reversed appellant's conviction for possession of stolen property, making this claim moot. Therefore, the district court did not err in denying this claim.


Third, appellant claimed that counsel was ineffective for failing to investigate and for failing to communicate prior to trial. Appellant failed to support his claims with specific facts that, if true, entitled him to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying these claims.

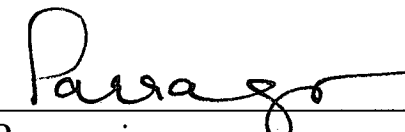
Finally, appellant claimed that counsel was ineffective for failing to object to the district court's determination of restitution. Appellant failed to demonstrate that he was prejudiced as he failed to demonstrate a reasonable probability of a different outcome regarding the

restitution amount had counsel objected. Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Michael Villani, District Judge
Samuel Joseph Rudolpho, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.