

IN THE SUPREME COURT OF THE STATE OF NEVADA

PEDRO RAFAEL DUARTE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58643

FILED

JUN 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Pedro Rafael Duarte's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

First, Duarte contends that the district court erred by not finding that counsel was ineffective for failing to investigate and call his wife, sister-in-law, and one of the co-conspirators to testify on his behalf at trial. 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 wrong 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 conducted an evidentiary hearing and found that the proposed witnesses lacked credibility and exculpatory value. As a result, the district court concluded that trial counsel was not deficient and that Duarte failed to demonstrate prejudice. See Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984); Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984). We conclude that the district court's findings are supported by substantial evidence and not clearly wrong, and Duarte 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 Duarte's ineffective-assistance claims.

Second, Duarte contends that the district court erred by allowing an attorney not proffered or qualified as an expert to testify at the evidentiary hearing on his petition, see NRS 50.275, and that the testimony also exceeded the scope allowed by NRS 50.265 for lay witness opinion. We disagree. To rebut Duarte's claim that trial counsel was ineffective for failing to call the three witnesses noted above, the State called a co-conspirator's former attorney, Pete Christiansen, to testify as a lay witness. Duarte objected and the State argued that Christiansen possessed "intimate knowledge of the case" and was familiar with the witnesses in question. The district court overruled Duarte's objection and allowed Christiansen to testify because his knowledge of the case "goes to what difference" presenting the three witnesses "would have made." Christiansen's testimony was properly admitted and did not exceed the scope allowed by NRS 50.265. Therefore, we conclude that the district court did not abuse its discretion. See Watson v. State, 94 Nev. 261, 264, 578 P.2d 753, 756 (1978) ("The admissibility and competency of opinion testimony, either expert or non-expert, is largely discretionary with the trial court."); see generally Brown v. State, 110 Nev. 846, 852, 877 P.2d 1071, 1075 (1994) (discretion to admit testimony at evidentiary hearing on post-conviction habeas petition lies with the district court).


Third, Duarte contends that the district court erred by limiting the scope of the evidentiary hearing on his petition to whether counsel was ineffective for failing to call the same three witnesses noted above to testify on his behalf at trial. Duarte claims this court's order remanding the case to the district court with instructions to conduct an


evidentiary hearing was unclear and he should have been allowed to present additional witnesses pertaining to counsel's allegedly deficient performance with regard to the water bottle evidence admitted at trial. See Duarte v. State, Docket No. 49279 (Order Affirming in Part, Reversing in Part, and Remanding, September 18, 2008). We disagree. The district court found that this court's order was "clear on its face, and limits Petitioner's right to call defense witnesses to those testifying regarding the phone records at issue and Petitioner's status as the getaway driver." The district court also found that this court previously rejected his claim that counsel was ineffective for failing to sufficiently investigate issues related to the water bottle evidence. See generally Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (law of the case doctrine precludes further litigation of the same issue). We agree and conclude that the district court properly limited the evidentiary hearing as instructed by this court.

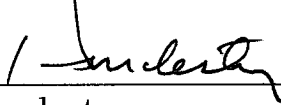
Finally, Duarte contends that the district court erred by failing to rule on his claim that trial counsel was ineffective for not challenging certain jury instructions. Duarte raised the claim below in a document titled, "Petitioner's Amended Supplementary Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus." The State claims the filing is untimely and successive and raises issues beyond the scope of the limited remand. We agree that the issues raised by Duarte in his supplemental petition are beyond the scope of the limited remand and do not relate back to the original petition. The district court, however, did not address the claims raised in the supplemental petition in its order denying Duarte's habeas petition or at any point in the proceedings below. Therefore, as a separate and independent filing, Duarte's supplemental petition remains pending in the district court. We

are confident that the district court will resolve Duarte's supplemental petition in an expeditious manner. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Jennifer P. Togliatti, District Judge
Law Office of Betsy Allen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk