

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL DAVIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59161

**FILED**

MAR 07 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Malone*  
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; Jerome T. Tao, Judge.

In his petition filed on February 15, 2011, appellant claimed that he received ineffective assistance of counsel. 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,

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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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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).

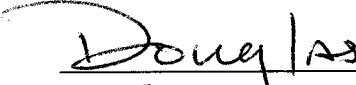
First, appellant claimed that counsel was ineffective for failing to compel discovery or investigate when discovery had been lost. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. Counsel challenged the lack of voluntary witness statements and a missing report prior to trial. The State claimed that there were no witness statements and that after a search of both the State's files and police files, the report did not exist. The district court determined that the statements and the report likely did not exist, and that if they were discovered later, the State would not be allowed to use them against appellant. Further, appellant failed to demonstrate a reasonable probability of a different outcome at trial had the counsel compelled further discovery or investigated the alleged lost evidence. Therefore, the district court did not err in denying this claim.

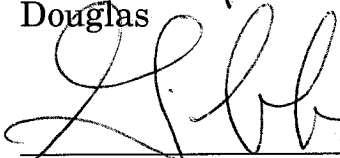
Appellant also claimed that counsel was ineffective for failing to effect sound trial strategy, failing to correctly state facts in pretrial motions, failing to object to the admission of prior convictions at sentencing, and failing to interview the victims or the police involved. Appellant failed to support these claims with specific facts that, if true, would entitle 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.

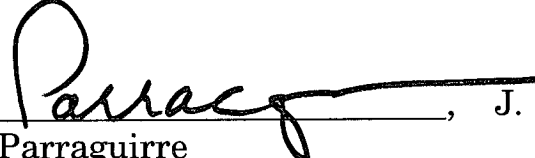
Next, appellant claimed that the district court erred by allowing an improper photo line-up and the subsequent in-court identification and that the district court erred by allowing the State's expert to testify without giving notice. These claims could have been raised on direct appeal and are waived absent a demonstration of good cause and prejudice. NRS 34.810(1)(b). Appellant failed to demonstrate good cause and prejudice; therefore, the district court did not err in denying these claims.

Finally appellant raised several claims that were previously raised on direct appeal: the district court erred when it denied his motion to sever, motion to dismiss, and motion for mistrial; the district court erred by instructing the jury on lesser-included offenses; and the sentence was cruel and unusual punishment. These claims were 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). Further, appellant failed to demonstrate that there was cumulative error. Accordingly, the district court did not err in denying the petition, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

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

cc: Hon. Jerome T. Tao, District Judge  
Paul Davis  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk