

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM EMERY FODOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59301

FILED

SEP 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant William Emery Fodor's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

First, Fodor contends that the district court erred by not finding that trial counsel was ineffective for failing to (1) challenge his adjudication as a habitual criminal and (2) investigate his case. Fodor also contends that appellate counsel was ineffective for failing to challenge (1) the habitual criminal adjudication and (2) the valuation and ownership of the stolen property. We disagree.¹

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,

¹Fodor improperly "incorporates by reference his entire Supplemental Points and Authorities and Reply filed below as though fully set forth therein." An appellant is not allowed to incorporate by reference documents filed in the district court. See NRAP 28(e)(2); Thomas v. State, 120 Nev. 37, 43 n.3, 83 P.3d 818, 822 n.3 (2004).


the district court concluded that either trial counsel was not deficient or that Fodor failed to demonstrate prejudice. See Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984). The district court also concluded that appellate counsel was not ineffective because Fodor “failed to specifically identify any appellate issues with a probability of success that were omitted from his appeal.” See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). The district court’s determination is supported by substantial evidence and is not clearly wrong, and Fodor 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 Fodor’s ineffective-assistance claims.

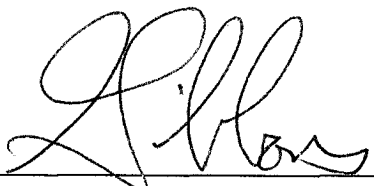
Second, Fodor was convicted of burglary, possession of a stolen vehicle, and possession of stolen property, and he now contends that insufficient evidence was adduced to support the jury’s verdict. With regard to the two possession counts, the claim should have been raised on direct appeal and falls outside the scope of claims permissible in a habeas petition challenging a judgment of conviction pursuant to a jury verdict. See NRS 34.810(1)(b)(2). Additionally, we previously considered and rejected Fodor’s claim on direct appeal that insufficient evidence supported the burglary conviction, Fodor v. State, Docket No. 51268 (Order of Affirmance, March 27, 2009), and the doctrine of the law of the case precludes further litigation of the issue, Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975); see also Hsu v. County of Clark, 123 Nev. 625, 630, 173 P.3d 724, 728-29 (2007) (observing that this court may “depart from a prior holding if convinced that it is clearly erroneous and would work a manifest injustice” (quoting Arizona v. California, 460 U.S.

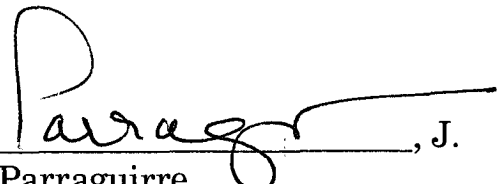
605, 618 n.8 (1983))). Therefore, we conclude that Fodor is not entitled to relief on this basis.

Third, Fodor contends that the district court erred by failing to specify which of the claims in his habeas petition were barred by the law of the case doctrine. Fodor raised several claims in the pleadings below that were also raised on direct appeal and the district court order rejecting these claims stated, "Many of Defendant's claims are barred from consideration by the law of the case doctrine. These issues resolved adversely to Defendant on direct appeal are not cognizable in a post-conviction petition for writ of habeas corpus." We are not persuaded that the district court's failure to list the specific claims rejected on this basis entitles Fodor to relief. Moreover, the district court's determination was supported by substantial evidence and not clearly wrong, and Fodor has not demonstrated that the district court erred as a matter of law. See generally Hall, 91 Nev. at 316, 535 P.2d at 799. Therefore, we conclude that the district court did not err by rejecting these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Elissa F. Cadish, District Judge
Michael H. Schwarz
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk