

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAURICE KING,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 65280

FILED

OCT 15 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
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; David B. Barker, Judge.

In his petition filed on December 17, 2013, appellant claimed he received ineffective assistance of trial and appellate 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

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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).

evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous 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 trial counsel was ineffective for failing to call two defense witnesses to testify at trial. Appellant failed to demonstrate that trial counsel was deficient or that he was prejudiced because appellant failed to support this claim with specific facts that, if true, would entitle him to relief. *Hargrove v. State*, 110 Nev. 498, 502, 686 P.2d 222, 225 (1984). Specifically, he failed to allege what these witnesses would have testified about had they been called at trial. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that trial counsel was ineffective for failing to provide the district court with jury instructions. Appellant failed to demonstrate that trial counsel was deficient or that he was prejudiced because appellant failed to support this claim with specific facts that, if true, would have entitled him to relief. *Id.* Specifically, he failed to allege what jury instructions should have been provided to the district court. Further, it appears from the record that trial counsel did present the district court with several proposed jury instructions, which were rejected by the district court. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that trial counsel was ineffective for failing to immediately appeal the denial of his motion to dismiss and motion for judgment of acquittal. Appellant failed to demonstrate that trial counsel was deficient or that he was prejudiced. The denials of these

motions were not immediately or independently appealable. *See* NRS 177.015(1). Further, trial counsel did raise the issue of the denial of the motion for judgment of acquittal on direct appeal from the judgment of conviction, and this court concluded that his claim lacked merit. *King v. State*, Docket No. 62290 (Order of Affirmance, July 22, 2013). Therefore, the district court did not err in denying this claim.

Next, appellant claimed that the district court erred by denying appellant's motion for judgment of acquittal, denying his motion to dismiss, and failing to give unspecified jury instructions. Further, appellant claimed that the district court lacked jurisdiction over his case because there was no crime committed. All of these claims could have been raised on direct appeal<sup>2</sup> and appellant failed to demonstrate cause for the failure to present them and actual prejudice to overcome the procedural bar. *See* NRS 34.810(1)(b). Therefore, the district court did not err in denying these claims.

Finally, appellant claimed that he is actually innocent. Even assuming this court recognizes a freestanding claim of actual innocence, appellant did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)); *see also Pellegrini v. State*, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001);

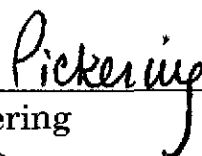
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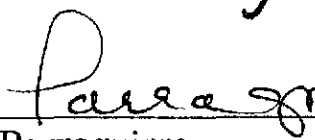
<sup>2</sup>Appellant's claim regarding the denial of the motion for judgment of acquittal was raised and rejected on appeal. Therefore, this claim was barred by the doctrine of law of the case. *See Hall v. State*, 91 Nev. 314, 535 P.2d 797 (1995).

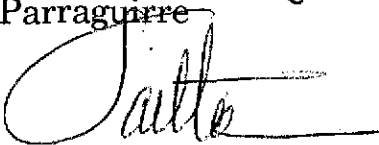
*Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

Therefore, the district court did not err in denying this claim, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Pickering

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

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. David B. Barker, District Judge  
Maurice King  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk