

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DOMINIQUE PALOMBO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65925

FILED

FEB 24 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Evidentiary hearing

Appellant contends that the district court erred by denying her request for an evidentiary hearing on her claim that defense counsel was ineffective for failing to conduct an adequate pretrial investigation.

To prevail on a claim of ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient and resulted in prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (adopting the *Strickland* test). A petitioner is entitled to an evidentiary hearing *only* if she "asserts specific factual allegations that are not belied or repelled by the record and that, if true, would entitle [her] to relief." *Nika v. State*, 124 Nev. 1272, 1301, 198 P.3d 839, 858 (2008). "We review the district court's determination that a petitioner is not entitled to an evidentiary hearing for abuse of discretion." *Stanley v. Schriro*, 598 F.3d 612, 617 (9th Cir. 2010).

Here, the district court denied appellant's request for an evidentiary hearing because appellant failed to specify what information a better investigation would have revealed and how it would have rendered a more favorable outcome probable. The record supports the district court's finding, and we conclude that the district court did not abuse its discretion in this regard. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming that counsel did not conduct an adequate investigation must specify what a more thorough investigation would have uncovered).

Law-of-the-case doctrine

Appellant contends that the district court erred by denying her request for an evidentiary hearing based on the law-of-the-case doctrine because she did not challenge defense counsel's failure to file a written suppression motion on direct appeal.

Appellant is correct. "In order for the law-of-the-case doctrine to apply, the appellate court must actually address and decide the issue explicitly or by necessary implication." *Dictor v. Creative Management Services, LLC*, 126 Nev. ___, ___, 223 P.3d 332, 334 (2010); *see also Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003) ("The doctrine only applies to issues previously determined, not matters left open by the appellate court."). Appellant's claim of ineffective assistance of counsel was not decided by the Nevada Supreme Court. *See Palombo v. State*, Docket No. 59676 (Order of Affirmance, September 13, 2012). Therefore, the law-of-the-case doctrine did not bar this claim from being raised in a post-conviction petition for a writ of habeas corpus.

Nonetheless, because the trial court denied defense counsel's oral suppression motion and appellant's factual allegations do not suggest a reasonable probability that a written suppression motion would have been successful, we conclude that appellant was not entitled to an evidentiary hearing on this claim and the district court's decision to deny the request for a hearing rendered the right result. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (observing that a judgment or order of the district court will be affirmed if it reached the right result albeit for a wrong reason).

Ineffective assistance of counsel

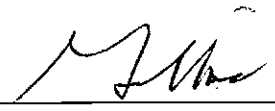
Appellant contends that the district court erred by denying her claim that defense counsel was ineffective for failing to advise her of a plea offer. We review the district court's resolution of ineffective-assistance claims de novo, giving deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Here, the district court held an evidentiary hearing on this claim and found that defense counsel did in fact advise appellant of the plea offer. Our review of the record reveals that the district court's finding is supported by substantial evidence and is not clearly wrong, and appellant has not demonstrated that the district court erred as a matter of law. *See generally Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner must prove the facts underlying her claim of ineffective-assistance by a preponderance of the evidence).

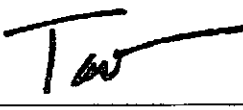
Cumulative error

Appellant contends that the district court erred in denying her habeas petition because the cumulative effect of the deficiencies in defense

counsel's performance warranted relief. However, even assuming that multiple deficiencies in counsel's performance may be cumulated to find prejudice under the *Strickland* test, see *McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318 n.17 (2009), the district court did not find any such deficiencies, so there was nothing to cumulate.

Having concluded that appellant is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk