

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEONARD ORVILLE FRANKLIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66189

FILED

APR 14 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Appellant Leonard Orville Franklin challenges the district court's dismissal of his February 29, 2012, habeas petition. Franklin was convicted of lewdness with a child under the age of fourteen years pursuant to a guilty plea. The Nevada Supreme Court affirmed Franklin's judgment of conviction on direct appeal. *Franklin v. State*, Docket No. 57355 (Order of Affirmance, November 18, 2011). And the district court granted the State's motion to dismiss Franklin's habeas petition after hearing argument on the applicability of NRS 34.810(1)(a).

Validity of guilty plea

Franklin claims that the district court erred by dismissing his claim that his guilty plea was not knowing and voluntary and by doing so without the benefit of an evidentiary hearing. We review a district court's rulings on the validity of guilty pleas and decisions regarding evidentiary

hearings for abuse of discretion. *Stanley v. Schriro*, 598 F.3d 612, 617 (9th Cir. 2010); *Johnson v. State*, 123 Nev. 139, 144, 159 P.3d 1096, 1098 (2007).

Here, the district court reviewed the plea canvass transcripts and found that Franklin initially had an issue with defense counsel, but the court disposed of that issue in camera.¹ The court gave Franklin numerous chances for more time to talk with counsel and to make his decision, but Franklin declined each offer. Counsel informed the court that he thoroughly discussed the guilty plea memorandum with Franklin, and Franklin stated that he read and understood the memorandum. The district court reviewed the written plea agreement and found that Franklin had acknowledged that his plea was given voluntarily and knowingly, it was not the product of threats or coercion, and it was signed with the advice of counsel. The court concluded that the totality of the circumstances do not demonstrate that Franklin entered his plea involuntarily or unknowingly.

The record supports the district court's findings and we conclude that Franklin has failed to demonstrate that the district court abused its discretion in this regard. See NRS 34.770(2); *Molina v. State*, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004) (defendant bears the burden of proving that the plea is invalid); *Crawford v. State*, 117 Nev. 718, 722, 30 P.3d 1123, 1126 (2001) ("A thorough plea canvass coupled with a detailed,

¹The Honorable Steven P. Elliott, District Judge, conducted the plea canvass and accepted Franklin's guilty plea.

consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently.”).

Ineffective assistance of counsel

Franklin claims that the district court erred by dismissing his claims of ineffective assistance of counsel and by doing so without an evidentiary hearing. 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 found that Franklin failed to provide specific factual support for his claims that counsel did not adequately investigate the case. And it further found that counsel’s failure to seek suppression of a witness’ statement did not fall below an objective standard of reasonableness because a trial was never scheduled and, therefore, counsel never started preparing for trial. Our review of the record reveals that the district court’s factual findings are supported by substantial evidence and are not clearly wrong, and Franklin has not demonstrated that the district court erred as a matter of law. See NRS 34.770(2); *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996); see also *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008) (explaining that a petitioner is only entitled to an evidentiary hearing if he has asserted specific factual allegations that are not belied or repelled by the record and that, if true, would entitle him to relief).

Proper construction of NRS 34.810

Franklin claims that the district court misconstrued the plain language of NRS 34.810(1)(a) and thereby improperly dismissed his habeas claims. He argues that the statute requires the district court to dismiss a habeas petition “*in its entirety* if the petition *as a whole* does not” state claims challenging the effectiveness of counsel or the validity of the guilty plea. And he asserts that the statute does not allow the district court to dismiss the individual claims on a claim-by-claim basis. However, we conclude that Franklin’s claim lacks merit because the Nevada Supreme Court has previously determined that this statute applies to the individual claims raised in the petition. *Kirksey*, 112 Nev. at 999, 923 P.2d at 1114 (“Where the defendant has pleaded guilty, the only claims that may be raised thereafter are those involving the voluntariness of the plea itself and the effectiveness of counsel.” (citing NRS 34.810(1))).

Constitutional application of NRS 34.810

Franklin claims that the district court’s application of NRS 34.810(1)(a) violated the Nevada State Constitution by placing an unreasonable regulation on the privilege of the writ of habeas corpus. Franklin argues that the district court supplied an additional requirement to the statute by requiring that each claim in the petition challenge the effectiveness of counsel or the validity of the guilty plea. And Franklin suggests that the statute is unconstitutional because it does not include any safeguards. However, we conclude that Franklin’s claim lacks merit for the following reasons: the district court’s application of NRS 34.810(1)(a) was consistent with the Nevada Supreme Court’s construction of this statute, NRS 34.810(1) is a reasonable regulation on the right to

pursue habeas relief, and NRS 34.810(3) provides a safeguard for overcoming the procedural bar when there is good cause and actual prejudice. See *Kirksey*, 112 Nev. at 999, 923 P.2d at 1114; *Passanisi v. Dir., Nev. Dep't of Prisons*, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989) (“The legislature may . . . impose a reasonable regulation on the writ of habeas corpus, so long as the traditional efficacy of the writ is not impaired.”); see generally *Pellegrini v. State*, 117 Nev. 860, 878, 34 P.3d 519, 531 (2001).

Conflict-free counsel

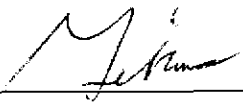
Franklin claims that the Nevada Supreme Court’s resolution of his conflict-free-counsel issue on direct appeal must be revisited in light of the true facts. We conclude that reconsideration of this claim is barred by the doctrine of the law of the case, see *Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975), and that Franklin has not demonstrated that the Nevada Supreme Court’s resolution of this issue is “so clearly erroneous that continued adherence to [it] would work a manifest injustice,” *Tien Fu Hsu v. Cnty. of Clark*, 123 Nev. 625, 631, 173 P.3d 724, 729 (2007) (internal quotation marks omitted). Accordingly, the district court did not err by denying this claim.

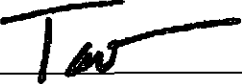
Cumulative error

Franklin claims that cumulative error requires a remand for an evidentiary hearing or a ruling that he has satisfied his burden of proof and should be allowed to withdraw from his guilty plea. However, this claim was not raised in the court below and we decline to consider it here. See *Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004).

Having concluded that the district court did not err by dismissing Franklin's petition, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elliott A. Sattler, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk