

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD LEE ROY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67151

FILED

APR 14 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

First, appellant Richard Lee Roy claimed that the police did not properly inform him of his *Miranda* rights before they interrogated him. The district court found that this claim was not cognizable because the Nevada Supreme Court had rejected it on direct appeal and therefore it was barred by the doctrine of the law of the case. The record supports the district court's finding and we conclude that it did not err by denying this claim. *See Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975); *Roy v. State*, Docket No. 61576 (Order of Affirmance, September 18, 2013).

Second, Roy claimed that his codefendant's testimony was improperly admitted at trial because it was false and uncorroborated. The district court found that this claim was not cognizable because the Nevada Supreme Court had rejected it on direct appeal and therefore it was

¹This appeal has been submitted for decision without oral argument, *see* NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted, *see Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

barred by the doctrine of the law of the case. The record supports the district court's finding and we conclude that it did not err by denying this claim. See *Hall*, 91 Nev. at 315, 535 P.2d at 798; *Roy*, Docket No. 61576 (Order of Affirmance, September 18, 2013).

Third, Roy claimed that he was denied his right to a speedy trial. The district court found that this claim was not cognizable because it could have been raised on direct appeal. The record supports the district court's finding and we conclude that it did not err by denying this claim. See NRS 34.810(1)(b)(2).

Fourth, Roy claimed that defense counsel was ineffective for failing to locate Taylor Hallix, a key witness who would have testified that she gave him permission to remove property from her apartment. The district court found that the owner of the burglarized apartment testified that Hallix was not permitted in her residence and had not been allowed to live there for more than a month. Substantial evidence was presented that the residence was forcibly entered and ransacked. And Roy testified as to the substance of the narrative he claimed that Hallix would have provided and the jury rejected this explanation. The district court concluded that Roy failed to demonstrate that his defense was prejudiced by counsel's performance. The record supports the district court's findings and we conclude that it did not err by denying this claim. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (establishing two-part test for ineffective assistance of counsel); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (adopting the test in *Strickland*); see also *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner must prove the facts underlying his claims of ineffective assistance by a preponderance of the evidence).

Fifth, Roy claimed that he was not given notice of the grand jury proceedings that resulted in a new charge of home invasion. The

district court found that this claim was not cognizable because it could have been raised on direct appeal. And, to the extent that Roy claimed that counsel was ineffective for failing to challenge the lack of notice, the district court found that he failed to demonstrate prejudice. The record supports the district court's finding and we conclude that it did not err by denying this claim. See NRS 34.810(1)(b)(2); *United States v. Mechanik*, 475 U.S. 66, 70 (1986) (holding that any error in the grand jury's charging decision was harmless because the petit jury found the defendants guilty beyond a reasonable doubt); *Lisle v. State*, 114 Nev. 221, 224-25, 954 P.2d 744, 746-47 (1998).

Sixth, Roy claimed that appellate counsel was ineffective for failing to "constitutionalize" his direct appeal claims. The district court found that Roy failed to provide any authority or argument in support of this claim, and therefore he failed to demonstrate that counsel's performance was deficient and prejudice ensued. The record supports the district court's finding and we conclude that it did not err by denying this claim. See *Means*, 120 Nev. at 1012, 103 P.3d at 33 (petitioner must prove the facts underlying his claims of ineffective assistance by a preponderance of the evidence).


Seventh, Roy claimed that he was illegally sentenced under the habitual criminal statute because some of the prior convictions used to support his habitual criminal adjudication were inadequate and the life sentences imposed for his non-violent property crimes were an abuse of the statute. The district court found that this claim was not cognizable because it could have been raised on direct appeal. The record supports the district court's finding and we conclude that it did not err by denying this claim. See NRS 34.810(1)(b)(2).


Eighth, Roy claimed that trial and appellate counsel were ineffective for failing to challenge his habitual criminal adjudication and

sentence. The district court found that Roy's prior convictions properly supported his habitual criminal adjudication and sentence. Trial counsel argued against the habitual criminal treatment, but was unsuccessful. And Roy failed to identify any argument regarding his adjudication and sentence that would have had a reasonable probability of success on appeal. The district court concluded that Roy failed to demonstrate that counsels' performance was deficient or prejudicial. The record supports the district court's findings and we conclude that it did not err by denying this claim. *See Strickland*, 466 U.S. at 687; *Kirksey*, 112 Nev. at 998, 923 P.2d at 1113-14 (Appellate counsel's performance is prejudicial if an "omitted issue would have a reasonable probability of success on appeal.").

Having concluded that the district court did not err by denying Roy's petition, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Richard Lee Roy
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk