


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESSE NOLAN BEARD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 68588

FILED

JAN 21 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

In his petition filed on March 31, 2015, appellant Jesse Beard claimed he received ineffective assistance of counsel. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate his 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, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the district court's factual findings if supported by substantial evidence and not

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<sup>1</sup>This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

clearly erroneous but review the district court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

Beard claimed counsel was ineffective because counsel coerced him into pleading guilty by telling him he would get a life sentence if he did not plead. This claim was already considered and rejected by the Nevada Supreme Court, *Beard v. State*, Docket No. 63839 (Order of Affirmance, May 13, 2014), and therefore, it is barred by the doctrine of law of the case, see *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).


Beard also claimed his counsel was ineffective for failing to discuss the plea agreement with him and failing to investigate his medical records. Beard failed to demonstrate counsel was deficient or resulting prejudice. These claims were previously raised in his presentence motion to withdraw his guilty plea, and the district court concluded they lacked merit. The district court's decision was supported by substantial evidence. Counsel testified at the hearing on the presentence motion to withdraw that Beard had three days to look over the plea agreement and counsel went over the plea agreement in detail the day before the change of plea hearing. Further, Beard answered affirmatively during the plea canvass that he read and understood the plea agreement and had discussed it with counsel. Counsel also testified his investigator reviewed Beard's medical records from when he was arrested but they did not provide information to support Beard's defense of involuntary intoxication. We conclude the district court did not err in denying these claims without an evidentiary hearing.

Beard also claimed the district court erred by denying his presentence motion to withdraw his guilty plea, his double jeopardy rights

were violated, and his sentence constituted cruel and unusual punishment. To the extent these claims were raised on direct appeal, they were barred by the doctrine of the law of the case. *See id.*; *Beard v. State*, Docket No. 63839 (Order of Affirmance, May 13, 2014). To the extent these claims were not raised on direct appeal, these claims were outside the scope of a postconviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea. *See* NRS 34.810(1)(a). Therefore, the district court did not err in denying these claims without an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Elissa F. Cadish, District Judge  
Jesse Nolan Beard  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>We also conclude the district court did not abuse its discretion by denying Beard's motion to appoint counsel. *See* NRS 34.750(1).