

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN S. LANG,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 36660

FILED

MAY 03 2002

ORDER OF AFFIRMANCE

JANEITE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant John S. Lang's post-conviction petition for a writ of habeas corpus.

Lang was convicted, pursuant to a jury verdict, of one count of first-degree arson.<sup>1</sup> The district court sentenced Lang to serve 72-180 months in prison; he was given credit for 321 days time served. In his direct appeal from the judgment of conviction, Lang contended: (1) there was insufficient evidence to support his conviction; (2) the district court erred by refusing to allow Lang to question certain witnesses regarding other potential suspects; and (3) there was prosecutorial misconduct. This court considered and rejected Lang's contentions, and dismissed his appeal.<sup>2</sup> The remittitur issued on September 28, 1999.

On April 26, 2000, Lang filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State

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<sup>1</sup>Lang was also charged by way of a criminal information and found not guilty of attempted murder with the use of a deadly weapon, and use of explosives to destroy property.

<sup>2</sup>Lang v. State, Docket No. 30296 (Order Dismissing Appeal, September 1, 1999).

opposed the petition. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent Lang or conduct an evidentiary hearing. On August 17, 2000, the district court denied Lang's petition. This timely appeal followed.

First, Lang raised numerous claims of ineffective assistance of trial counsel in his petition filed below. Lang contended that his trial counsel failed to adequately investigate the circumstances of his case, including failing to interview potential witnesses and uncover exculpatory evidence. Lang also argued that his appellate counsel was ineffective for failing to raise issues regarding witness tampering. We disagree with Lang's contentions.

In order to prevail on a claim of ineffective assistance of counsel, a defendant must show: (1) that his counsel's performance fell below an objective standard of reasonableness; and (2) that but for counsel's deficient performance, the outcome of the proceedings would have been different.<sup>3</sup> A district court's factual finding regarding a claim of ineffective assistance of counsel is entitled to deference so long as it is supported by substantial evidence and is not clearly wrong.<sup>4</sup> Further, the tactical decisions of defense counsel are "virtually unchallengeable absent extraordinary circumstances."<sup>5</sup>

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<sup>3</sup>Strickland v. Washington, 466 U.S. 668, 687, 694 (1984); Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996); see also Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

<sup>4</sup>Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

<sup>5</sup>Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) (citing Strickland, 466 U.S. at 691), modified on other grounds by Harte v. State, 116 Nev. 1054, 13 P.3d 420 (2000).

Our review of the record on appeal reveals that the district court did not err in denying Lang's claims of ineffective assistance of counsel. The district court's factual findings are supported by the record and are not clearly wrong. The district court determined that Lang's claims of ineffective assistance of trial and appellate counsel consisted of either unsupported allegations or were belied by the record.<sup>6</sup> Moreover, the district court found that Lang's trial counsel conducted a reasonably complete investigation and that counsel's strategy was credible. Therefore, we conclude the district court did not err in determining that Lang failed to show that counsel's performance fell below an objective standard of reasonableness, and that but for counsel's deficient performance, the outcome of the proceedings would have been different.

Second, Lang contended that the prosecutor committed misconduct during closing arguments, and that several of the district court's evidentiary rulings during the trial were in error. We conclude that the district court not err in denying these claims. Lang raised the issue of prosecutorial misconduct in his direct appeal from the judgment of conviction, and this court considered and rejected those claims. Therefore, the doctrine of the law of the case prevents further litigation of these issues.<sup>7</sup> Additionally, Lang's newly raised claims pertaining to the alleged prosecutorial misconduct, and also his claims regarding the district court's evidentiary rulings, should have been pursued on direct appeal and are

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<sup>6</sup>See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

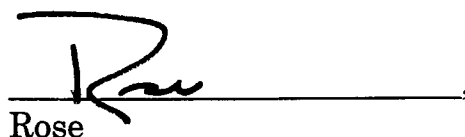
<sup>7</sup>See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

therefore waived and not reviewable on appeal; Lang failed to demonstrate good cause for not raising these claims earlier.<sup>8</sup>

Having reviewed the record on appeal and for the reasons set forth above, we conclude that Lang is not entitled to relief and that briefing and oral argument are unwarranted.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Mark W. Gibbons, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
John S. Lang  
Clark County Clerk

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<sup>8</sup>See NRS 34.810(1)(b)(2); NRS 34.810(3)(a).

<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.