

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GUSTAVO BANEGAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73915-COA

FILED

NOV 16 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Gustavo Banegas appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on May 17, 2017. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

First, Banegas claims the district court erred by denying his petition because defense counsel was ineffective for advising him to accept the State's plea offer before his pretrial petition for a writ of habeas corpus had been decided. We note Banegas expressly stated throughout his petition that he was not bringing a claim of ineffective assistance of counsel but rather seeking the withdrawal of his guilty plea based on a manifest injustice. The record demonstrates Banegas did not raise a claim of ineffective assistance of counsel in his petition and the district court did not consider such a claim in the first instance. Consequently, we decline to address this claim. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004).


Second, Banegas claims the district court erred by denying his petition without conducting an evidentiary hearing. A petitioner is entitled to an evidentiary hearing only if he has asserted specific factual allegations


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that are not belied or repelled by the record and, if true, would entitle him to relief. *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008). We review a district court's determination that a petitioner is not entitled to an evidentiary hearing for abuse of discretion. *Berry v. State*, 131 Nev. 957, 969, 363 P.3d 1148, 1156 (2015). Here, Banegas' sentencing claim was barred by the doctrine of the law of the case, see *Banegas v. State*, Docket No. 68982 (Order of Affirmance, April 20, 2016); *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 767, 798-99 (1975), and his pretrial-habeas-petition claim was belied by the record, see generally *Sheriff v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (discussing the evidence necessary to support a grand jury's probable cause finding). Consequently, the district court did not abuse its discretion by denying Banegas' petition without an evidentiary hearing.

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Jennifer P. Togliatti, District Judge
Mueller Hinds & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk