

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEORGE OMAR MATUTI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73937-COA

FILED

NOV 16 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

George Omar Matuti appeals from a district court order denying a postconviction petition for a writ of habeas corpus file on May 31, 2017.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

First, Matuti claims the district court erred by denying his petition because he was deprived of effective assistance of counsel. To establish ineffective assistance of trial counsel, a petitioner must demonstrate counsel's performance was deficient because it fell below an objective standard of reasonableness, and resulting prejudice in that there is a reasonable probability, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Similarly, to establish ineffective assistance of appellate counsel, a petitioner must demonstrate counsel's performance was deficient because it fell below an objective standard of reasonableness, and resulting prejudice in that the omitted issue had a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

18-904653

The petitioner must demonstrate both components of the ineffective-assistance inquiry—deficiency and prejudice. *Strickland*, 466 U.S. at 697. We give deference to the district court’s factual findings if supported by substantial evidence and not clearly wrong but review the court’s application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

Matuti claimed defense counsel was ineffective for failing to investigate his alibi defense that he was in a tire store at the time of the offense and other people went in and out of his apartment. He also asserted counsel should have investigated phone records but did not identify how the phone records would have helped his defense. The district court found counsel was not ineffective because the alibi defense would not have been a viable defense. Specifically, the district court found the kidnapping charge alleged “Matuti lured an underage girl from California to Las Vegas without the permission of her parents and in order to have sex with her over the course of several months.” Matuti was arrested at the apartment he had rented with the underage girl. Numerous witnesses testified they had observed Matuti and the girl living in the apartment over the course of a month and a half. And the girl testified she had a relationship with Matuti, she moved into the apartment with him in Las Vegas, and they had sex. The district court’s factual findings are supported by the record, and we conclude the district court did not err by rejecting this claim. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming counsel did not conduct an adequate investigation must show how a better investigation would have made a more favorable outcome probable).

Matuti claimed appellate counsel was ineffective because she was the same counsel who represented him at trial, and she did not challenge trial counsel's failure to request jury instructions supporting his alibi. The district court found these claims lacked merit because ineffective-assistance-of-counsel claims are not properly raised on direct appeal and there was no basis for requesting an alibi instruction "because no one at trial testified as to any supposed alibi." The district court's factual findings are supported by the record, and we conclude the district court did not err by rejecting this claim. *See Rippo v. State*, 122 Nev. 1086, 1095, 146 P.3d 279, 285 (2006) (claims of ineffective assistance of counsel should be raised in a post-conviction petition for a writ of habeas corpus rather than on direct appeal).

Second, Matuti claims the district court erred by denying his petition because he was deprived of due process of law when the Public Defender's Office failed to forward his legal records. The district court found this claim was belied by the record, which demonstrates defense counsel informed the district court on September 24, 2013, and again on November 14, 2013, that she had provided Matuti with all of his discovery. The record supports the district court's finding, and we conclude it did not err by rejecting this claim. *See Hargrove v. State*, 100 Nev. 498, 502, 686 P.3d 222, 225 (1984) (a petitioner is not entitled to postconviction relief if his claims are bare or belied by the record).

Third, Matuti claims the district court erred by denying his petition because he was deprived of equal protection of the law by the prosecutor's discriminatory exclusion of prospective jurors from the jury panel. The district court found this claim was barred by the doctrine of the

law of the case because it had been previously decided on direct appeal and therefore could not be reargued in the instant petition. The record supports the district court's finding, and we conclude it did not err by rejecting this claim. *See Matuti v. State*, Docket No. 65245 (Order of Affirmance, May 17, 2016); *Pellegrini v. State*, 117 Nev. 860, 888, 34 P.3d 519, 538 (2001); *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 767, 798-99 (1975).


Fourth, Matuti claims the district court erred by denying his petition because he was deprived of a fair trial when the prosecutor elicited perjured testimony from witnesses. The district court found this claim was bare because Matuti failed to identify the alleged false testimony and show a reasonable likelihood it affected the judgment of the jury. Although the record supports the district court's finding, we conclude it should have rejected this claim as procedurally barred. *See* NRS 34.810(1)(b)(2). Because the district court reached the right result, albeit for the wrong reason, we affirm the denial of this claim. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

Fifth, Matuti 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 asserts specific factual allegations 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, Matuti's claims were bare, belied by the record, or barred by the doctrine of the law of the case. Consequently,

the district court did not abuse its discretion by denying his petition without an evidentiary hearing.

Having concluded Matuti is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
George Omar Matuti
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We have reviewed all documents Matuti has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Matuti has modified his original claims or raised new and different claims in his appeal, we decline to consider these modified or new and different claims because they were not raised in the district court in the first instance. *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).

We deny Matuti's motion to reconsider our October 12, 2018, order denying Matuti's motion for the appointment of appellate counsel.