

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PETER DOUGLAS ORTMANN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74772-COA

FILED

DEC 19 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Peter Douglas Ortmann appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 14, 2017.¹ Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

First, Ortmann claims the district court erred by rejecting his claim defense counsel was ineffective for failing to advise him of the immigration consequences of his guilty plea. However, this claim was barred by the doctrine of the law of the case because it was previously decided on direct appeal and therefore could not be reargued in the instant petition. *See Ortmann v. State*, Docket No. 69916 (July 26, 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). Accordingly, we conclude the district court did not err by rejecting this claim.

Second, Ortmann claims the district court erred by rejecting his freestanding claim of actual innocence. However, this claim falls outside

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

the scope of permissible claims that may be raised in a postconviction habeas petition challenging a judgment of conviction based on a guilty plea. See NRS 34.810(1)(a) (limiting claims in postconviction habeas petitions to allegations “the [guilty] plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel”). In addition, neither the United States Supreme Court nor the Nevada Supreme Court have “resolved whether a prisoner may be entitled to habeas relief based on a freestanding claim of actual innocence.” *McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013); see *Berry v. State*, 131 Nev. 957, 967 n.3, 363 P.3d 1148, 1154 n.3 (2013). And even if such relief were available, Ortmann has not demonstrated he is actually innocent of the multiple felony charges the State relinquished during the plea bargaining process.² See *Bousley v. United States*, 523 U.S. 614, 624 (1998). Accordingly, we conclude the district court did not err by rejecting this claim.

Third, Ortmann claims the district court erred by rejecting his claim defense counsel was ineffective for failing to obtain a transcript of his plea canvass and argue the plea canvass’ deficiencies during the hearing on his presentence motion to withdraw his guilty plea. However, the district court found the transcript of the plea canvass did not provide compelling evidence of any failure or misconduct. Instead, it demonstrated Ortmann knew what he was doing, he understood what it meant to plead guilty, and he entered his plea knowingly. The district court’s factual findings are supported by the record and are not clearly wrong. We conclude Ortmann

²Ortmann was originally charged with two counts of transacting business as an unlicensed broker-dealer and/or sales representative, two counts of sale of unregistered securities, and two counts of securities fraud—all of which are category B felonies. See NRS 90.310(1); NRS 90.460; NRS 90.570(2); NRS 90.650(1)(a).

failed to demonstrate he was prejudiced by defense counsel's performance and the district court did not err by rejecting 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).


Fourth, Ortmann claims the district court erred by rejecting his claim the plea canvass was inadequate because it did not establish a factual basis for the offense, the existence of criminal intent, and a knowingly and intelligently entered plea. However, we conclude the district court did not err by rejecting this claim because it is belied by the record. *See Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (a petitioner is not entitled to postconviction relief if his factual allegations are belied by the record).


Fifth, Ortmann claims the district court erred by rejecting his claim the transcript of the hearing on his presentence motion to withdraw his guilty plea demonstrates judicial bias, false facts, and prejudicial assumptions and perceptions. However, this claim falls outside the scope of permissible claims that may be raised in a postconviction habeas petition challenging a judgment of conviction based on a guilty plea. *See NRS 34.810(1)(a)*. Accordingly, we conclude the district court did not err by rejecting this claim.

Sixth, Ortmann claims the district erred by rejecting his claim the State engaged in malicious prosecution, fraud upon the court, and prosecutorial misconduct to suppress material exculpatory evidence and

obtain a conviction. However, this claim falls outside the scope of permissible claims that may be raised in a postconviction habeas petition challenging a judgment of conviction based on a guilty plea. See NRS 34.810(1)(a). Accordingly, we conclude the district court did not err by rejecting this claim.

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Stefany Miley, District Judge
Peter Douglas Ortmann
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk