IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE EMILIO SILVA,
Petitioner,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70534

ORDER OF AFFIRMANCE

Jose Emilio Silva appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 4, 2013. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Silva contends the district court erred by denying his ineffective-assistance-of-appellate-counsel claim without first holding an evidentiary hearing. We disagree.

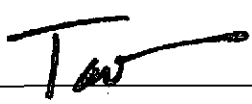
Silva argues appellate counsel should have challenged the district court's denial of his pretrial motion to suppress evidence. To prove ineffective assistance of appellate counsel, a petitioner must demonstrate counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). To warrant an evidentiary hearing, a petitioner's claims must be supported by specific factual allegations that are not repelled by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). We give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous 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).

Silva's failure to provide this court with an adequate record precludes our review. *See Thomas v. State*, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004) (appellant is ultimately responsible for providing appellate court with portions of the record necessary to resolve claims on appeal); *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."). Underlying Silva's claim is a challenge to the district court's ruling on a motion to suppress, but he provides neither the motion nor the district court's ruling. *See* NRAP 30(b)(2). And even assuming the evidence was wrongly admitted at trial, Silva's failure to provide this court with the trial transcripts prevents any prejudice analysis. *See Chapman v. California*, 386 U.S. 18, 23 (1967) ("The question is whether there is a reasonable possibility that the evidence complained of might have contributed to the conviction." (quotation marks omitted)); *Obermeyer v. State*, 97 Nev. 158, 162, 625 P.2d 95, 97 (1981) (holding admission at trial of unconstitutionally collected evidence to be harmless beyond a reasonable doubt). Accordingly, we cannot conclude the district court erred in denying this claim without first conducting an evidentiary hearing, and we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

cc: Chief Judge, Eighth Judicial District
Eighth Judicial District, Dept. Ten
Carmine J. Colucci & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk