

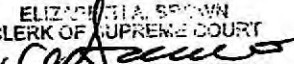
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KWAME ANIR SAAFIR,
Appellant,
vs.
CITY OF LAS VEGAS,
Respondent.

No. 81131-COA

FILED

APR 12 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

**ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING**

Kwame Anir Saafir appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

First, Saafir argues the district court erred by dismissing his claims of ineffective assistance of counsel on the ground that they were barred by the doctrine of the law of the case. The record does not demonstrate that the claims of ineffective assistance of counsel Saafir raised in his postconviction petition were previously considered and rejected. Accordingly, we conclude the district court erred by dismissing these claims as barred, *cf. Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (“The law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same.”), and we reverse this decision as to these claims and remand this matter to the district court.

Upon remand, the district court shall first determine whether it has jurisdiction to consider Saafir’s postconviction petition for a writ of habeas corpus. “[A] post-conviction petition for a writ of habeas corpus cannot be filed by a petitioner who is no longer under a sentence of death or imprisonment for the conviction at issue.” *Coleman v. State*, 130 Nev. 190, 193, 321 P.3d 863, 865 (2014); *see Nev. Const. art. 6, § 6(1); NRS 34.724(1).*

The record before this court suggests Saafir was not in custody pursuant to his conviction for battery constituting domestic violence when he filed his March 12, 2020, petition. If the district court finds that Saafir had not expired his sentence prior to filing the petition, the district court should consider Saafir's claims of ineffective assistance of counsel on the merits and, if warranted, conduct an evidentiary hearing.¹

Second, Saafir argues the district court erred by dismissing his claim that his plea was not knowingly and voluntarily entered. The district court found Saafir had previously challenged the validity of his plea and concluded the claim was thus barred by the law of the case. Assuming without deciding that the district court had jurisdiction to consider Saafir's petition, the record before this court supports the district court's finding, and we conclude the district court did not err by dismissing this claim. See *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005) (providing that appellate courts give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the district court's application of the law to those facts de novo).

Third, Saafir argues the district court erred by dismissing his claims that his conviction violated the Double Jeopardy Clause, the Equal Protection Clause, the Privileges and Immunities Clause, and his right to due process. These claims were not based on an allegation that Saafir's plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel, and therefore, these claims were not appropriately raised in this petition. See NRS 34.810(1)(a). Therefore, assuming without deciding that the district court had jurisdiction to

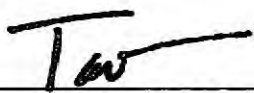
¹In light of this court's disposition, the district court may, but is not required to, reconsider Saafir's request for the appointment of postconviction counsel.

consider Saafir's petition, we conclude the district court did not err by dismissing these claims.

Finally, Saafir argues Judge Scotti should not have considered his postconviction petition because Judge Scotti presided over Saafir's appeal from the municipal court's order denying his motion to withdraw plea. NRS 34.730(3)(b) provides that a postconviction petition for a writ of habeas corpus should be assigned to the original judge or court, and Saafir fails to demonstrate assignment to Judge Scotti in compliance with that statute was improper. To the extent Saafir asserts Judge Scotti was biased against him due to the prior proceedings, "rulings and actions of a judge during the course of official judicial proceedings do not establish" bias sufficient to disqualify a district court judge from presiding over a particular matter. *In re Petition to Recall Dunleavy*, 104 Nev. 784, 789-90, 769 P.2d 1271, 1275 (1988). Therefore, we conclude Saafir is not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Richard Scotti, District Judge
Kwame Anir Saafir
Attorney General/Carson City
Las Vegas City Attorney
Eighth District Court Clerk