

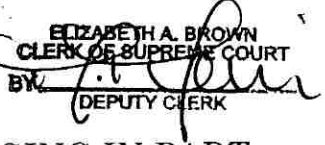
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RENATO LEE TREJO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85301-COA

**FILED**

FEB 27 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER AFFIRMING IN PART AND DISMISSING IN PART*

Renato Lee Trejo appeals from orders of the district court denying a postconviction petition for a writ of habeas corpus filed on June 13, 2022, and a motion to amend judgment of conviction to include jail time credits filed on July 29, 2022. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

*Postconviction petition for a writ of habeas corpus*

Trejo argues the district court erred by denying his claim that counsel was ineffective. To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We give

deference to the district 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).

Trejo claimed that counsel was ineffective for failing to independently test substances, which Trejo sold to an undercover officer on two occasions, to determine whether the substances were methamphetamine. An undercover officer field-tested the substances, and the tests came back positive for methamphetamine. Further, the State informed the district court on the first day of trial<sup>1</sup> that it had provided counsel with two lab reports confirming that the substance in both instances was methamphetamine. Based on this record, Trejo failed to demonstrate that counsel was deficient for failing to have the substances tested. Further, Trejo failed to demonstrate a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial had counsel had the substances tested. Therefore, we conclude the district court did not err by denying this claim.

Next, Trejo argues the district court erred by denying his claim that counsel was ineffective because he and counsel had an actual conflict of interest based on counsel's lack of preparation and communication with Trejo. "Conflict of interest and divided loyalty situations can take many forms, and whether an actual conflict exists must be evaluated on the specific facts of each case. In general, a conflict exists when an attorney is

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<sup>1</sup>The trial was later vacated when Trejo agreed to plead guilty.

placed in a situation conducive to divided loyalties.” *Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) (quoting *Smith v. Lockhart*, 923 F.2d 1314, 1320 (8th Cir. 1991)). Prejudice is presumed if “counsel ‘actively represented conflicting interests’” and the “conflict of interest adversely affected [the defendant’s] lawyer’s performance.” *Strickland*, 466 U.S. at 692 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 350, 348 (1980)). Trejo did not demonstrate counsel was placed in a situation that was conducive to divided loyalties or that his counsel actively represented conflicting interests. Thus, he failed to demonstrate that counsel was deficient based on an actual conflict of interest, that prejudice could be presumed, or that he was actually prejudiced by counsel’s performance. Therefore, we conclude the district court did not err by denying this claim.<sup>2</sup>

*Motion to amend judgment of conviction*

Trejo argues the district court erred by denying his motion to amend judgment of conviction to include jail time credits. Because no statute or court rule permits an appeal from an order denying a motion to amend judgment to include jail time credits, we lack jurisdiction. See *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990) (“We have consistently held that the right to appeal is statutory; where no statutory

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<sup>2</sup>To the extent Trejo argues the trial court did not adequately consider his conflict claim when deciding his motion to dismiss counsel, this claim was previously raised on appeal from Trejo’s direct appeal, and it was rejected by this court. See *Trejo v. State*, No. 79465-COA, 2021 WL 2549222 (Nev. Ct. App. June 21, 2021) (Amended Order of Affirmance). Thus, this claim was barred by the doctrine of the law of the case. See *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

authority to appeal is granted, no right to appeal exists.”). Accordingly, we dismiss this portion of Trejo’s appeal.

Having concluded that Trejo is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED in part and the appeal DISMISSED IN PART.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Joseph Hardy, Jr., District Judge  
Renato Lee Trejo  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk