

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS ERIBERTO ORELLANA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85742-COA

**FILED**

JUL 12 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Carlos Eriberto Orellana appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 18, 2022. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

In his petition, Orellana first claimed that his trial counsel was ineffective. To demonstrate ineffective assistance of trial counsel, a petitioner must show 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. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 687. A petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686

P.2d 222, 225 (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).

First, Orellana claimed that his trial counsel was ineffective for failing to move for a mistrial after the trial court intimidated and pressured a juror into finding Orellana guilty. Orellana raised the underlying claim on direct appeal, and the Nevada Supreme Court concluded that the trial court did not engage in coercive questioning of the relevant juror. *Orellana v. State*, No. 80053, 2021 WL 2178779 (Nev. May 27, 2021) (Order of Affirmance). This conclusion constitutes the law of the case, which "cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

In light of the Nevada Supreme Court's conclusion that the trial court did not engage in coercive questioning of the relevant juror, Orellana did not demonstrate that counsel's performance fell below an objective standard of reasonableness due to the failure to request a mistrial based upon that questioning. In addition, Orellana failed to demonstrate a reasonable probability of a different outcome had counsel moved for a mistrial based upon the nature of the trial court's questioning of the relevant juror. Therefore, we conclude that the district court did not err by denying this claim.

Second, Orellana appeared to claim that his trial counsel was ineffective for failing to move for a mistrial due to a hung jury. A hung jury did not occur in this matter. Accordingly, Orellana failed to demonstrate that his counsel's performance fell below an objective standard of reasonableness due to any failure to move for a mistrial due to a hung jury or a reasonable probability of a different outcome had counsel done so. Therefore, we conclude that the district court did not err by denying this claim.


Orellana next appeared to claim that the trial court intimidated and pressured a juror into finding Orellana guilty. Orellana raised this claim on direct appeal, and the Nevada Supreme Court concluded that he was not entitled to relief. *Orellana*, No. 80053, 2021 WL 2178779. Thus, the doctrine of the law of the case prevents further consideration of this claim. *See Hall*, 91 Nev. at 315-16, 535 P.2d at 798-99. Accordingly, we conclude the district court did not err by denying this claim.

Finally, Orellana requested the appointment of postconviction counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). The district court found that the issues in this matter were not difficult, Orellana was able to

comprehend the proceedings, and discovery with the aid of counsel was not necessary. For these reasons, the district court denied the motion to appoint counsel. The record supports the decision of the district court, and we conclude the district court did not abuse its discretion by denying Orellana's request for the appointment of postconviction counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

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

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

  
\_\_\_\_\_, Sr.J.  
Silver

cc: Hon. Carli Lynn Kierny, District Judge  
Carlos Eriberto Orellana  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>The Honorable Abbi Silver, Senior Justice, participated in the decision of this matter under a general order of assignment.