



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERICH MILTON NOWSCH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 91056-COA

ORDER OF AFFIRMANCE

Erich Milton Newsch appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on July 13, 2020, and supplement. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

After a road rage incident, Newsch and a codefendant followed the victim home, where Newsch shot and killed the victim from a vehicle. Newsch was subsequently convicted, pursuant to a guilty plea, of second-degree murder with the use of a deadly weapon, and this court affirmed the judgment of conviction on direct appeal. *See Newsch v. State*, No. 72255-COA, 2018 WL 4408754 (Nev. Ct. App. Sep. 11, 2018) (Order of Affirmance). Newsch filed the instant postconviction habeas petition and supplement, raising several claims of ineffective assistance of counsel and other claims. The district court conducted an evidentiary hearing on the limited issue of whether evidence or discovery had been lost or destroyed. Thereafter, the district court denied the petition and supplement.

On appeal, Newsch contends the district court erred by denying his claims of ineffective assistance of counsel. 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). A petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Newsch claimed counsel was ineffective for failing to investigate the facts of his intoxication "during the time period leading up to [his] being taken into custody."¹ Newsch claimed that he was high on two different kinds of marijuana, that multiple officers witnessed him smoke marijuana, and that he was intoxicated when he confessed. The record indicates counsel filed a motion to suppress Newsch's statements, arguing that Newsch was under the influence of controlled substances at the time he was

¹In his informal brief, Newsch states he was intoxicated when he gave his confession. We construe this statement as challenging the denial of his related ineffective assistance of counsel claim. To the extent Newsch independently challenges the validity of his confession, such a claim could have been raised on direct appeal and is thus waived. See *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999).

interviewed by the police. Counsel further contended that the police not only knew Newsch was under the influence of marijuana but also in fact encouraged Newsch to smoke marijuana and watched him smoke marijuana as part of his surrender. The trial-level court held an evidentiary hearing on this motion, during which three witnesses testified: a police officer who spoke with Newsch during his apprehension (Jeff Harper), the detective who conducted Newsch's interview (Cliff Mogg), and Newsch.² Ultimately, the court concluded that Newsch's statement was freely and voluntarily given and denied the motion.

In light of the foregoing, Newsch failed to allege specific facts that are not belied by the record indicating counsel did not investigate his intoxication. To the extent Newsch claimed counsel should have conducted additional investigation into his intoxication—such as by identifying additional police officers who observed him smoking marijuana, by having an expert testify, or by inquiring into the type of marijuana that he smoked—Newsch failed to allege specific facts indicating objectively reasonable counsel would have conducted such additional investigation. *See Chappell v. State*, 137 Nev. 780, 788, 501 P.3d 935, 950 (2021) (stating “a petitioner must do more than baldly assert that his attorney could have, or should have, acted differently” and “must *specifically explain* how his attorney's performance was objectively unreasonable” (quotation marks omitted)). He also failed to demonstrate that there was a reasonable probability he would not have pleaded guilty and would have insisted on going to trial had such additional investigation been done. Therefore, we conclude the district court did not err by denying this claim.

²The trial-level court also admitted video of Newsch's interview with Mogg, the results of a drug test, and a voluntary statement from Harper.

Second, Nowsch claimed counsel was ineffective for failing to advise him about the consequences of his plea deal. Nowsch contended that counsel did not explain the potential sentence he faced, did not give him enough time to review the plea deal, and told him to just say yes or no to questions at the plea canvass. Nowsch previously filed a presentence motion to withdraw his guilty plea, in which he argued that counsel failed to adequately and accurately explain the penalties he faced.³ He also argued that counsel pressured him into entering his guilty plea by failing to present the written plea agreement until the morning of the plea canvass and by discouraging him from asking questions at the plea canvass. The trial-level court held an evidentiary hearing on this motion, at which Nowsch and counsel testified. Thereafter, the court denied the motion, finding that Nowsch was aware of the potential sentence, that there was no credible evidence that counsel told Nowsch to “parrot the word yes every time the Court asked him questions at the time of his plea,” and that counsel advised Nowsch of the consequences of his plea and did not pressure Nowsch into entering his guilty plea. On appeal, this court concluded that the trial-level court did not abuse its discretion by denying the motion. *See Nowsch*, No. 72255-COA, 2018 WL 4408754, at *1.

Because the trial-level court previously determined that counsel advised Nowsch of the consequences of his plea and did not pressure Nowsch

³Independent counsel was appointed to litigate this motion. To the extent Nowsch claimed prior counsel was ineffective for refusing to file the motion, Nowsch failed to allege specific facts indicating counsel’s performance was deficient. *See United States v. Del Muro*, 87 F.3d 1078, 1080 (9th Cir. 1996) (requiring trial counsel to prove his own ineffectiveness creates an inherent conflict of interest that deprives the defendant of his Sixth Amendment right to effective assistance of counsel).

into entering his guilty plea, and this court did not disturb that decision on direct appeal, Nowsch's claim was barred by the law of the case doctrine. *See Litchfield v. Tucson Ridge Homeowners Ass'n*, 140 Nev., Adv. Op. 57, 555 P.3d 267, 270 (2024) ("Under the law-of-the-case doctrine, a legal decision made at one stage of a criminal or civil proceeding should remain the law of that case throughout the litigation, unless and until the decision is modified or overruled by a higher court." (internal quotation marks omitted)); *see also Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975) ("The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings."). Therefore, we conclude the district court did not err by denying this claim.

Third, Nowsch claimed appellate counsel was ineffective for losing his case file or for filing his appeal without a complete record. The district court held an evidentiary hearing on this claim, at which six of Nowsch's prior attorneys testified, including Nowsch's appellate counsel Kristina Wildeveld.⁴ The district court found that no files had been lost and that appellate counsel had everything needed in order to file Nowsch's appeal. The district court's findings are supported by substantial evidence. Wildeveld testified that she did not receive Nowsch's case file from prior counsel but instead made a file for him by pulling records from the Eighth Judicial District Court's electronic filing system and that she did not attempt to recover the case file from prior counsel because she had everything she needed for the direct appeal. *See* NRAP 10(a) ("The district court record consists of the papers and exhibits filed in the district court, the transcript of the proceedings, if any, the district court minutes, and the docket entries made by the district court clerk."). Moreover,

⁴Dayvid Figler also represented Nowsch on direct appeal but did not testify at this hearing.

Nowsch did not identify any issues that he would have raised on direct appeal had counsel had a more complete record. In light of the foregoing, Nowsch failed to demonstrate that appellate counsel was deficient or that any omitted issue had a reasonable probability of success on appeal. *See Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Therefore, we conclude the district court did not err by denying this claim.

Nowsch also argues the district court erred by denying his claims that (1) the State concealed and/or failed to disclose documents or information regarding the dismissal of his charges in justice court; (2) the State forged his name on the superseding indictment; (3) the State used false information to reinstate the dismissed charges; and (4) the trial-level court erred by denying a request for a continuance and by allowing subpoenas to be filed and witnesses to testify. These claims did not challenge the validity of Nowsch's guilty plea or allege counsel was ineffective in relation thereto and were thus outside the scope of claims permissible in a postconviction habeas petition stemming from a guilty plea. *See* NRS 34.810(1)(a); *see also Gonzales v. State*, 137 Nev. 398, 403-04, 492 P.3d 556, 562 (2021) (holding that a guilty plea does not waive a postconviction habeas claim of ineffective assistance of counsel at sentencing). Moreover, each of these claims could have been raised on direct appeal and are thus waived. *See Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999). Therefore, we conclude the district court did not err by denying these claims.

For the foregoing reasons,⁵ we

⁵To the extent Nowsch raises arguments not specifically addressed herein, we have considered the same and conclude that they do not present a
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ORDER the judgment of the district court AFFIRMED.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Jacqueline M. Bluth, District Judge
Attorney General/Carson City
Clark County District Attorney
Erich Milton Nowsch
Eighth District Court Clerk

basis for relief or need not be reached given this disposition. We also deny Nowsch's "emergency motion" filed on July 26, 2026. In particular, Nowsch's request for expedited review and release pending this court's decision is denied as moot. Moreover, the State was not required to file a response to Nowsch's informal brief on appeal and, thus, it has not confessed any error by failing to file such a brief. See NRAP 46A(c) ("An opposing party is not required to respond to documents, including briefs, filed by a party appearing pro se unless ordered to do so by the Supreme Court or Court of Appeals.").