

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDY MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56366

FILED

MAY 10 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Doug Smith, Judge.

Appellant filed his timely post-conviction petition for a writ of habeas corpus on March 25, 2010. For the reasons stated below, we conclude that the district court properly denied appellant's petition.

First, appellant claimed that his trial counsel was ineffective for advising him to waive his right to a preliminary hearing and "allowing" appellant to unconditionally waive his right to a preliminary hearing.

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

Appellant failed to demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). Counsel stated on the record that he had advised appellant that it was in his best interest to have a preliminary hearing and that he would like to proceed with the hearing. Despite this, appellant repeatedly informed the justice court that he wished to waive his right to a preliminary hearing and was thoroughly canvassed by the justice court regarding the consequences of his decision. Accordingly, appellant failed to demonstrate that counsel's actions were deficient, as appellant proceeded against the clear advice of counsel. Further, appellant failed to demonstrate how the outcome of trial would have been different had he received a preliminary hearing. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that standby counsel was ineffective for waiving his right to exercise peremptory challenges during voir dire. Appellant was not entitled to the appointment of standby counsel, therefore he was not entitled to the effective assistance standby counsel. See Harris v. State, 113 Nev. 799, 804, 942 P.2d 151, 155 (1997); McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996). To the extent appellant's claims could be construed as argument that the actions of standby counsel deprived him of his peremptory challenges, or

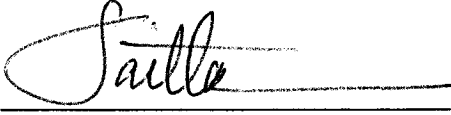
interfered with his right to represent himself, appellant failed to raise these issues on direct appeal, and therefore, these claims were procedurally barred. NRS 34.810(1)(b). Appellant failed to demonstrate good cause or prejudice to overcome the procedural bar. See id. Therefore, the district court did not err in denying this claim.

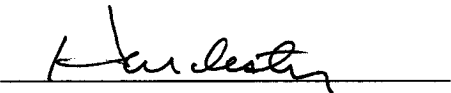
Third, appellant claimed that he was incompetent to represent himself, the trial court wrongfully allowed the information to be amended on the day of trial, and the State engaged in prosecutorial misconduct when it allegedly misled the district court regarding the potential penalties in the amended information. This court considered and rejected each of these arguments on direct appeal. Miller v. State, Docket No. 53013 (Order of Affirmance, January 8, 2010). Accordingly, these claims were barred by the doctrine of law of the case, which “cannot be avoided by a more detailed and precisely focused argument.” See Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, the district court did not err in denying these claims.

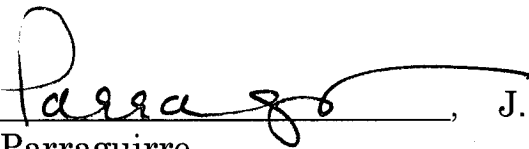
Finally, appellant claimed that the State engaged in prosecutorial misconduct when the prosecutor compared appellant to a monkey during closing arguments. Appellant could have raised this argument in his direct appeal, but failed to do so. This claim was procedurally barred, and appellant failed to demonstrate good cause or prejudice to overcome the procedural bar. See NRS 34.810(1)(b).

Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²

 J.
Saitta

 J.
Hardesty

 J.
Parraguirre

cc: Hon. Doug Smith, District Judge
Andy Miller
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.