

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL GERARD PAGE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67146

**FILED**

NOV 19 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant Daniel Page argues the district court erred by denying his ineffective assistance of counsel claims raised in his January 16, 2013, petition and January 23, 2014, amended petition. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his 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, but for counsel's errors, 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, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the 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, Page claims counsel was ineffective for failing to adequately investigate Page's medical condition prior to entering his plea. Page fails to demonstrate counsel was deficient. Counsel testified at the postconviction evidentiary hearing he had no reason to believe the medications Page took affected his ability to understand the proceedings. The district court concluded counsel was credible and substantial evidence supports the decision of the district court. Therefore, the district court did not err in denying this claim.

Second, Page claims counsel was ineffective for failing to present testimony from Page's doctor at the hearing on his presentence motion to withdraw his guilty plea. Page fails to demonstrate counsel was deficient or resulting prejudice. At the postconviction evidentiary hearing, counsel testified he did not call the physician to testify because he did not believe the testimony would have been helpful. The district court found counsel credible and substantial evidence supports the decision of the district court. "Tactical decisions [of counsel] are virtually unchallengeable absent extraordinary circumstances," *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989), and Page fails to demonstrate any extraordinary circumstances. Further, Page fails to demonstrate a reasonable probability of a different outcome at the hearing had the physician testified because Page failed to call the physician at the postconviction evidentiary hearing. Therefore, the district court did not err in denying this claim.

Next, Page claims the district court erred in denying his claim that his plea was invalid because he was taking psychiatric drugs at the time he entered his plea. This claim was previously raised on direct appeal, and the Nevada Supreme Court rejected it. *See Page v. State*, Docket No. 59520 (Order of Affirmance, September 13, 2012). Therefore, the claim is barred by the doctrine of law of the case, *Hall v. State*, 91 Nev.

314, 315-16, 535 P.2d 797, 798-99 (1975), and the district court did not err in denying this claim without considering it at the evidentiary hearing. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations, not belied by the record and, if true, would entitle him to relief).

Next, Page claims the district court erred by bifurcating his presentence motion to withdraw his guilty plea into two hearings. This claim is not properly raised in a postconviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. *See* NRS 34.810(1)(a). Because this claim does not challenge the validity of Page's plea or allege he received ineffective assistance of counsel, the district court did not err in denying this claim without considering it at the evidentiary hearing. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

Finally, Page argues he is entitled to relief based on cumulative error. Because Page failed to demonstrate any error, he necessarily failed to demonstrate cumulative error. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Tao

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

cc: Hon. Valerie Adair, District Judge  
Law Office of Julian Gregory, L.L.C.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk