

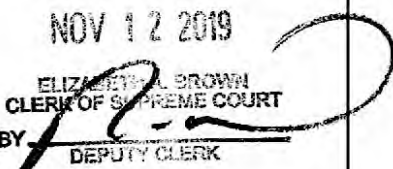
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID MARK MURPHY,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN,
Respondent.

No. 77828-COA

FILED

NOV 12 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

David Mark Murphy appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Initially, Murphy argues the district court erred by denying his claims of ineffective assistance of counsel raised in his October 10, 2018, petition. In his petition, Murphy claimed his trial counsel was ineffective for failing to question Jorge Mendoza concerning Murphy's participation in the crimes. Murphy contended trial counsel should have asked Mendoza whether Murphy drove the vehicle to the victims' house, if Murphy participated in the planning of the crimes, and if Murphy participated in the commission of the crimes.

To prove ineffective assistance of counsel, a petitioner must demonstrate 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, the outcome of the proceedings would have been different. *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

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must be shown, *Strickland*, 466 U.S. at 697. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific allegations not belied by the record, that if true, would entitle him to relief. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

At trial, Mendoza testified that Murphy participated in discussions where the codefendants planned the crimes and following the planning discussion, Murphy drove Mendoza and others to the victims' house. Mendoza also testified that Murphy waited in the vehicle while some of the codefendants entered the victims' house in an attempt to take the victims' marijuana, a shootout with the victims' ensued, and Mendoza was shot in his leg and he shot toward the victims' house.

Although Murphy's counsel did not question Mendoza, given Mendoza's testimony that Murphy planned and participated in the crimes, Murphy failed to demonstrate his counsel was deficient or a reasonable probability of a different outcome at trial had counsel questioned Mendoza regarding these topics. Therefore, the district court did not err by denying this claim without conducting an evidentiary hearing.

In addition, Murphy appeared to argue he was entitled to relief due to the cumulative errors of counsel. However, Murphy failed to demonstrate any errors and, accordingly, he was not entitled to relief. Therefore, the district court did not err by denying this claim without conducting an evidentiary hearing.

Second, Murphy asserts the district court erred by denying his claims that the trial court erred by: (1) denying his motion to exclude Summer Larson's testimony due to the State's untimely notice, (2) denying his motions for severance, (3) admitting his cellular telephone records, and (4) disclosing Robert Figueroa's unredacted agreement to testify. Murphy

also argued he was entitled to relief due to the cumulative effect of trial errors. This court considered these claims on direct appeal and concluded Murphy was not entitled to relief. *Murphy v. State*, Docket No. 72103-COA (Order of Affirmance, February 26, 2018). The doctrine of the law of the case prevents further consideration of these claims and “cannot be avoided by a more detailed and precisely focused argument.” *Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, the district court did not err by denying these claims without conducting an evidentiary hearing.

Third, Murphy asserts the district court erred by denying his contention that the trial court was biased against him. This claim could have been raised in Murphy’s direct appeal, and he failed to demonstrate good cause for his failure to do so. *See* NRS 34.810(1)(b)(2). Therefore, the district court did not err by denying this claim without conducting an evidentiary hearing.

Fourth, Murphy argues the district court erred by denying the petition without appointing postconviction counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). A review of the record reveals the issues in this matter were not difficult, Murphy was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. *See id.* Therefore, Murphy fails to demonstrate the district court abused its discretion by declining to appoint postconviction counsel. *See Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 760-61 (2017).

Finally, Murphy argues the district court erred by adopting the State’s proposed order denying his petition. Murphy does not identify any legal reason why the district court should not have adopted the proposed draft order. *See generally Byford v. State*, 123 Nev. 67, 69-70, 156 P.3d 691,

692-93 (2007) (discussing the process for prevailing parties and district court judges to follow when utilizing Eighth Judicial District Court Rule 7.21 for submission and adoption of a prevailing party's proposed order). Moreover, Murphy does not demonstrate the adoption of the proposed order adversely affected the outcome of the proceedings or his ability to seek full appellate review. Therefore, Murphy is not entitled to relief based on this argument. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Carolyn Ellsworth, District Judge.
David Mark Murphy
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk