

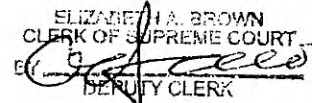
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE ALEJANDRO FIGUEROA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 85805-COA

FILED

SEP 15 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
  
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING*

Jose Alejandro Figueroa appeals from an order of the district court granting a motion to dismiss a postconviction petition for a writ of habeas corpus filed on September 1, 2021. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

In his petition, Figueroa alleged claims of ineffective assistance of counsel. 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. To warrant an evidentiary hearing, 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, Figueroa claimed counsel was ineffective for failing to investigate alleged inaccuracies in the trial testimony of an off-duty police officer. Figueroa claimed his route of travel differed from the route testified to by the officer and thus his detention and subsequent arrest were the result of mistaken identity. Figueroa claimed that counsel should have obtained camera footage from locations along Figueroa's alleged travel route to confirm his account. Figueroa supported his argument with specific factual allegations that are not belied by the record and, if true, would have entitled him to relief. Accordingly, we conclude the district court erred by denying this claim without conducting an evidentiary hearing. Therefore, we reverse the district court's denial of this claim and remand for the district court to conduct an evidentiary hearing on this claim.

Second, Figueroa claimed counsel was ineffective for failing to seek a jury instruction on mistaken identity. This claim appears to be related to the claim discussed above. In light of our disposition of that claim, we cannot conclude the district court did not err by denying this claim. Therefore, we reverse the district court's denial of this claim and remand for the district court to conduct an evidentiary hearing on this claim.

Third, Figueroa claimed counsel was ineffective for failing to investigate and move to strike a seated juror with whom Figueroa had a "previous connection." Figueroa alleged that he told counsel about the connection and if counsel had investigated, she would have discovered that the juror had treated Figueroa for a medical issue and the physician-patient relationship was acrimonious. A defendant is guaranteed the right to an

impartial jury. U.S. Const. amend. VI; Nev. Const. art. I, § 8, cl. 2. Implied bias may arise from a juror's relationship to a party or interest in the outcome of the case. *See Sayedzada v. State*, 134 Nev. 283, 290, 419 P.3d 184, 191-92 (Ct. App. 2018). Figueroa supported his argument with specific factual allegations of potential implied juror bias that are not belied by the record and, if true, may have entitled him to relief. Accordingly, we conclude the district court erred by denying this claim without conducting an evidentiary hearing. Therefore, we reverse the district court's denial of this claim and remand for the district court to conduct an evidentiary hearing on this claim.

Figueroa next claimed that the cumulative errors of counsel entitled him to relief. Even assuming that multiple deficiencies in counsel's performance may be considered cumulatively to establish prejudice, *see McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318 n.17 (2009), in light of our disposition, we do not reach Figueroa's claim of cumulative error.

Finally, Figueroa argued the trial court erred by denying his *Batson*<sup>1</sup> challenge. Figueroa had raised the *Batson* issue on direct appeal, and the Nevada Supreme Court concluded that he was not entitled to relief. *See Figueroa v. State*, No. 80294, 2021 WL 150576 (Nev. Jan. 15, 2021). 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). Therefore, we conclude the district court did not err by denying this claim.

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<sup>1</sup>*Batson v. Kentucky*, 476 U.S. 79 (1986).

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

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

  
\_\_\_\_\_, J.  
Bulla

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

cc: Hon. Barry L. Breslow, District Judge  
Jose Alejandro Figueroa  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk