

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK DAVID GETZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43515

FILED

MAR 28 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from the district court's denial of a petition for writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On April 27, 2000, the district court convicted appellant, Jack David Getz, pursuant to a jury verdict, of first degree murder with the use of a deadly weapon. The district court sentenced Getz to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. On direct appeal, this court affirmed the judgment of conviction and sentence.¹ The remittitur issued on April 9, 2002.

On March 13, 2003, Getz filed a post-conviction petition for a writ of habeas corpus in the district court.² The State opposed the

¹Getz v. State, Docket No. 36107 (Order of Affirmance, March 13, 2002).

²On May 2, 2003, Getz filed an amended petition. On September 9, 2003, Getz filed a second amended petition for a writ of habeas corpus. Getz's counsel did not include the amended petition filed on May 2, 2003, in the appendix filed in this court.

petition. Getz filed a reply. On May 28, 2004, the district court held an evidentiary hearing on Getz's ineffective assistance of counsel claims.³ All other claims were denied without an evidentiary hearing. On June 23, 2004, the district court entered a written order denying the petition. This appeal followed.

In this appeal, Getz first contends that the district court erred by denying his claim that the jury instruction defining implied malice is unconstitutional. This claim could have been raised on direct appeal and thus was waived.⁴ Getz failed to plead and prove specific facts demonstrating good cause or actual prejudice.⁵ Thus, this claim was procedurally barred, and the district court did not err in denying this claim.

Next, Getz contends that the district court erred by denying his claims that the jury instruction merging premeditation and deliberation was improper in light of Byford v. State,⁶ and that Byford should have been applied retroactively. This court previously rejected

³We note that Getz raised several claims of ineffective assistance of counsel in his petition below, and that the district court held an extensive evidentiary hearing regarding these claims. However, Getz's counsel has not contested the district court's denial of these claims in his brief on appeal. Accordingly, we have not considered them.

⁴See NRS 34.810(1)(b)(2); see also Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994).

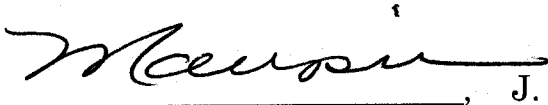
⁵NRS 34.810(3).

⁶116 Nev. 215, 994 P.2d 700 (2000).

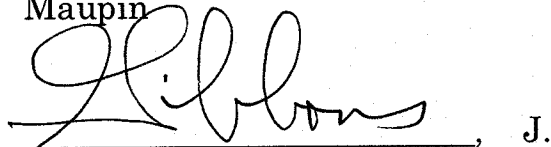
these arguments in Getz's direct appeal.⁷ The doctrine of the law of the case barred further consideration of these claims, and Getz cannot avoid this doctrine by raising a "more detailed and precisely focused argument."⁸ Accordingly, the district court did not err in denying these claims.

Having considered the issues raised on appeal and concluded they are without merit, we

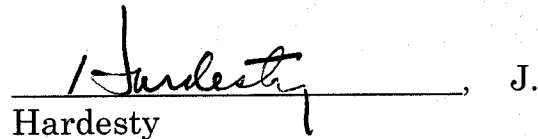
ORDER the judgment of the district court AFFIRMED.⁹

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

⁷Getz v. State, Docket No. 36107.

⁸Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

⁹We 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.

cc: Honorable Jackie Glass, District Judge
Law Offices of James P. Sitter
Jack David Getz
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk