

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARWIN ROBINSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43977

**FILED**

JUN 16 2005

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Darwin Robinson's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On August 19, 1994, the district court convicted Robinson, pursuant to a jury verdict, of first-degree murder. The district court sentenced Robinson to a life term in the Nevada State Prison without the possibility of parole. This court dismissed Robinson's appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on May 21, 1996.

On September 23, 1996, Robinson filed a post-conviction petition for a writ of habeas corpus in the district court, which denied the petition on April 25, 1997. This court dismissed his appeal.<sup>2</sup>

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<sup>1</sup>Robinson v. State, Docket No. 26293 (Order Dismissing Appeal, May 1, 1996).

<sup>2</sup>Robinson v. State, Docket No. 30467 (Order Dismissing Appeal, June 8, 2000).

Robinson filed a second post-conviction petition for a writ of habeas corpus in the district court on July 10, 2003. The State opposed the petition, arguing that it was untimely filed and successive. Moreover, the State specifically pleaded laches. After conducting an evidentiary hearing, the district court denied Robinson's petition on August 10, 2004. This appeal followed.

Robinson filed his petition more than seven years after this court issued the remittitur from his direct appeal. Thus, his petition was untimely filed.<sup>3</sup> Moreover, Robinson's petition was successive because he had previously filed a post-conviction habeas petition in the district court.<sup>4</sup> Robinson's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>5</sup> Further, because the State specifically pleaded laches, he was required to overcome the presumption of prejudice to the State.<sup>6</sup>

"[T]he good cause necessary to overcome a procedural bar must be some impediment external to the defense."<sup>7</sup> Robinson argues that his procedural defects should be excused due to newly discovered evidence. Specifically, Robinson contends that a letter written by his daughter Lisa

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<sup>3</sup>See NRS 34.726(1).

<sup>4</sup>See NRS 34.810(1)(b), (2).

<sup>5</sup>See NRS 34.726(1); NRS 34.810(3).

<sup>6</sup>See NRS 34.800(2).

<sup>7</sup>Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998).

demonstrates that he is innocent of murdering his infant son Kyle. Robinson does not indicate when he received the letter; however, it is dated November 11, 2000. Additionally, Robinson argues that the prosecution was aware of Lisa's explanation of Kyle's injuries prior to trial and failed to disclose this information to the defense.

At the conclusion of the evidentiary hearing on Robinson's good cause claim, the district court determined that Lisa's testimony regarding how Kyle sustained his injuries was "so lacking in credibility that it would not render a different result reasonably probable." The district court also concluded that State was unaware of Lisa's version of the events prior to trial and thus did not withhold material evidence in violation Brady v. Maryland.<sup>8</sup> Consequently, the district court concluded that Robinson failed to demonstrate good cause to overcome his procedural bars.

A district court's factual findings are entitled to great deference on appeal.<sup>9</sup> Here, it appears from the record that Robinson was aware of Lisa's explanation of Kyle's injuries in November 2000. Yet he waited more than two years to file his second habeas petition. Additionally, Robinson fails to demonstrate that the district court erred in finding that the State did not commit a Brady violation.

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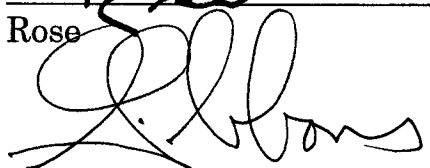
<sup>8</sup>373 U.S. 83 (1963).

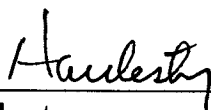
<sup>9</sup>See Little v. Warden, 117 Nev. 845, 854, 34 P.3d 540, 546 (2001).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that the district court did not err in denying Robinson's habeas petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

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

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Donald M. Mosley, District Judge  
Federal Public Defender/Las Vegas  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk