

IN THE SUPREME COURT OF THE STATE OF NEVADA

RYAN HADLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44010

FILED

JAN 31 2005

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court dismissing appellant Ryan Hadley's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On January 4, 2000, a corrected judgment was entered convicting Hadley, pursuant to a guilty plea, of one count each of second-degree murder with the use of a firearm and attempted murder with the use of a firearm. The district court sentenced Hadley to serve a prison term of 10-25 years plus an equal and consecutive term for the use of a firearm for the murder, and a concurrent prison term of 96-240 months plus an equal and consecutive term for the use of a firearm for the attempted murder. Hadley voluntarily withdrew his direct appeal from the judgment of conviction and sentence.¹

On September 27, 2000, Hadley filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Hadley v. State, Docket No. 35328 (Order Dismissing Appeal, February 25, 2000).

district court appointed counsel to represent Hadley, and counsel supplemented the petition. In his petition, Hadley presented claims of ineffective assistance of counsel and argued that his plea was involuntary. The State opposed the petition. The district court conducted an evidentiary hearing, and on October 11, 2001, entered an order denying Hadley's petition. On appeal, this court affirmed the district court's order.²

On November 18, 2003, Hadley filed another proper person post-conviction petition for a writ of habeas corpus in the district court. The State moved to dismiss Hadley's successive petition based on the procedural bar. With the assistance of counsel, Hadley filed an opposition to the State's motion to dismiss. The district court conducted a hearing on the petition and on August 25, 2004, entered an order dismissing Hadley's petition. This timely appeal followed.

Application of the procedural default rules to post-conviction petitions for writs of habeas corpus is mandatory.³ The Nevada Legislature "never intended for petitioners to have multiple opportunities to obtain post-conviction relief absent extraordinary circumstances."⁴ In this case, the district court found that Hadley's petition was successive because he had previously filed a post-conviction petition for a writ of

²Hadley v. State, Docket No. 38784 (Order of Affirmance, June 5, 2002).

³State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003).

⁴Pellegrini v. State, 117 Nev. 860, 876, 34 P.3d 519, 530 (2001).

habeas corpus.⁵ Further, we note that Hadley filed the instant petition more than three and a half years after this court granted his motion to voluntarily withdraw his direct appeal, and thus, his petition was untimely filed.⁶ Therefore, Hadley's petition was procedurally barred absent a demonstration of good cause and prejudice.⁷ Finally, Hadley may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice.⁸ A colorable showing of actual innocence may excuse a failure to demonstrate cause to excuse procedural bars under the fundamental miscarriage of justice standard.⁹

In an attempt to excuse his procedural defects, Hadley concedes that he filed a successive petition, but argues for the first time on appeal that he raised several of the same claims again in order to exhaust state remedies for the purpose of federal review. Hadley also claims that the procedural bars should not be applied to his petition because "he is actually innocent of the charges" because "he was merely present" when his codefendant shot the victims in self-defense.

We conclude that the district court did not err in denying Hadley's petition. This court has repeatedly stated that failure to exhaust

⁵See NRS 34.810(2).

⁶See NRS 34.726(1); Gonzales v. State, 118 Nev. 590, 596 n.18, 53 P.3d 901, 904 n.18 (2002).

⁷See NRS 34.726(1); NRS 34.810(3).

⁸Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

⁹Pellegrini, 117 Nev. at 887, 34 P.3d at 537.

state court remedies for purpose of federal review does not provide good cause sufficient to excuse the procedural bars that apply to all petitions challenging a judgment of conviction pursuant to NRS chapter 34.¹⁰ Moreover, as noted above, Hadley raises this argument as alleged good cause for the first time on appeal, and thus, this court need not address it.¹¹

Finally, we also conclude that a fundamental miscarriage of justice would not occur through application of the procedural bars. Hadley cannot demonstrate that the proposed evidence was not known to him at the time he filed his previous petition¹² or that such evidence supported his claim of actual innocence.¹³ In fact, in dismissing Hadley's petition, the district court noted that during the evidentiary hearing on his first petition, there was sufficient evidence that Hadley and his codefendant intended to rob the victims, and that one of the victims was murdered while the other was shot. There was also evidence that Hadley shot a third victim while fleeing from the scene of the crime. The district court concluded that "the fact that petitioner may not have killed [the deceased victim] himself does not establish his innocence" because the "evidence was sufficient to convict petitioner of the first degree murder of [the

¹⁰See generally Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

¹¹McNelton v. State, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).


¹²See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).


¹³See Calderon v. Thompson, 523 U.S. 538, 559 (1998).

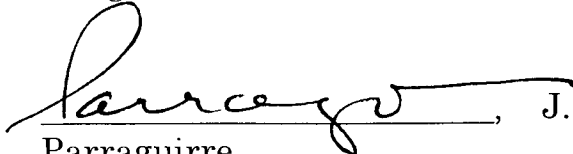
victim] under conspiracy and/or aiding and abetting theories of liability.”
We agree and conclude that the district court did not err in dismissing this claim.

Accordingly, having considered Hadley’s contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge
Karla K. Butko
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk