

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES KELLY CHAVEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44023

**FILED**

JUN 29 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 denying appellant Charles Kelly Chavez's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On April 14, 1998, the district court convicted Chavez, pursuant to a jury verdict, of murder, robbery, and unlawful use of a card for withdrawal of money. The district court sentenced him to a life term in the Nevada State Prison for murder with the possibility of parole after 20 years. The district court also sentenced Chavez to concurrent terms of 72 to 180 months for robbery and 48 to 120 months for the remaining count. Chavez did not file a direct appeal.

On September 25, 1998, Chavez filed a post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Chavez and conducted an evidentiary hearing. On March 29, 2001, the district court denied Chavez's petition. This court affirmed the district court's decision.<sup>1</sup>

---

<sup>1</sup>Chavez v. State, Docket No. 37759 (Order of Affirmance, February 4, 2003).

On December 19, 2003, Chavez filed a second post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, arguing that the petition was untimely filed and successive, and pleading laches pursuant to NRS 34.800(2). On September 29, 2004, the district court denied Chavez's petition. This appeal followed.

Chavez filed his petition more than five years after entry of the judgment of conviction. Thus, Chavez's petition was untimely filed.<sup>2</sup> Moreover, his petition was successive because he had previously filed a post-conviction habeas petition in the district court.<sup>3</sup> Chavez's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>4</sup>

"[T]he good cause necessary to overcome a procedural bar must be some impediment external to the defense."<sup>5</sup> Chavez argued that the procedural bars should be excused due to newly discovered evidence. Namely, a conflict of interest existed with the public defender appointed to represent him because the Public Defenders Office had previously represented one of the State's witnesses, Paul Flintroy.

Here, Chavez does not reveal precisely when he discovered the alleged conflict of interest with his counsel, and thus he fails to demonstrate that this evidence was undiscoverable prior to the filing of his

---

<sup>2</sup>See NRS 34.726(1).

<sup>3</sup>See NRS 34.810(1)(b), (2).

<sup>4</sup>See NRS 34.726(1); NRS 34.810(3).


<sup>5</sup>Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998).


first habeas petition.<sup>6</sup> Additionally, Chavez asserts generally that this conflict of interest adversely affected his trial. However, he fails to explain how he was prejudiced.

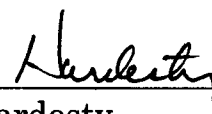
Finally, because the State specifically pleaded laches, Chavez was required to overcome the presumption of prejudice to the State.<sup>7</sup> We conclude that he fails to do so.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that the district court did not err in denying Chavez's post-conviction petition for a writ of habeas corpus. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

---

<sup>6</sup>See generally Hennie v. State, 114 Nev. 1285, 1289-90, 968 P.2d 761, 764 (1998); Funches v. State, 113 Nev. 916, 923-24, 944 P.2d 775, 779-80 (1997).

<sup>7</sup>See NRS 34.800(2).

cc: Hon. Lee A. Gates, District Judge  
Law Office of Betsy Allen  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk