

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT BYFORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44215 **FILED**

NOV 16 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, VACATING IN PART,
AND REMANDING

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

The State charged appellant Robert Byford and two codefendants, Christopher Williams and Todd Smith, with the murder of Monica Wilkins in 1991. Smith pleaded guilty to being an accessory to the murder and testified against Byford and Williams. In 1994, a jury found Byford and Williams guilty and returned sentences of death for both, but this court reversed and remanded for retrial due to violation of their Fifth Amendment right to remain silent.¹ The two were again convicted in 1998. Byford again received a death sentence, but Williams received a term of life in prison without the possibility of parole. This court affirmed Byford's conviction and sentence in 2000.²

Byford then filed in proper person a timely petition in the district court seeking habeas relief and appointment of counsel. The court

¹Murray v. State, 113 Nev. 11, 930 P.2d 121 (1997).

²Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

appointed counsel, and a supplement to the petition was filed. The court eventually denied the petition without conducting an evidentiary hearing.

The supplemental petition numbered more than 680 pages and set forth 37 claims with many subclaims. In denying relief, the district court found that claims 1-4, 6-17, 19-22, 24-33, and 37 could have been raised previously and thus were waived and that claims 5, 9, 11-16, 18, 20, 23, and 37 had been previously decided and thus were settled by the law of the case.³ We conclude that the district court did not err in denying these claims. A post-conviction habeas petition must be dismissed if its grounds could have been raised at trial or on direct appeal unless the petitioner pleads and proves specific facts that demonstrate good cause for the failure to present the grounds and actual prejudice.⁴ And the law of a first appeal is the law of the case in all later appeals in which the facts are substantially the same; this doctrine cannot be avoided by more detailed and precisely focused argument.⁵

Byford contends, correctly, that claims of ineffective assistance by trial or appellate counsel are properly presented in a timely, first post-conviction habeas petition.⁶ However, Byford presented claims 1-33 and 37 as direct claims of error and inserted boilerplate language in most simply asserting that ineffective assistance of counsel provided good cause

³The district court did not explain why it included claims 9, 11-16, 20, and 37 in both categories.

⁴NRS 34.810(1)(b), (3).

⁵Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

⁶Thomas v. State, 120 Nev. 37, 43, 83 P.3d 818, 822 (2004).

to raise them. This court has stated that such conclusory attempts to assert ineffective assistance of counsel are not acceptable.⁷

The district court also properly found that claim 34, alleging that Byford may become incompetent to be executed, was "premature." This matter is not an actual controversy upon which a court can render a judgment.⁸

The district court did not, however, adequately address claim 35, asserting numerous subclaims of ineffective trial counsel, and claim 36, asserting numerous subclaims of ineffective appellate counsel.⁹ NRS 34.830(1) provides: "Any order that finally disposes of a petition, whether or not an evidentiary hearing was held, must contain specific findings of fact and conclusions of law supporting the decision of the court." The order disposing of the petition here merely states in regard to claims 35 and 36 that "the Defense has not met its burden under Strickland v. Washington . . . and McNelson v. State . . . and has not made the requisite showing warranting the relief sought." Thus, the order lacks specific findings of fact and conclusions of law to support its decision disposing of these claims on their merits, particularly in the absence of any evidentiary hearing.

We remind the district court that a post-conviction habeas petitioner is entitled to an evidentiary hearing on any claims that if true


⁷Evans v. State, 117 Nev. 609, 647, 28 P.3d 498, 523 (2001).

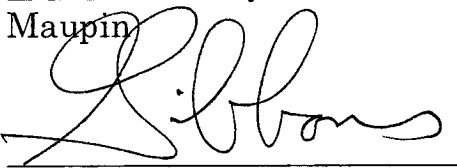
⁸See State v. Viers, 86 Nev. 385, 386-87, 469 P.2d 53, 54 (1970).

⁹The subclaims made under each of these claims largely duplicate verbatim those made under the other and largely repeat verbatim the substance of claims 1-33. Counsel's rationale for this repetitious, wasteful approach, resulting in a supplemental petition of nearly 700 pages, escapes us.

would warrant relief as long as the claims are supported by specific factual allegations which the record does not belie or repel.¹⁰ We therefore vacate the district court's order insofar as it dismisses claims 35 and 36 of Byford's supplemental petition. We remand this matter and direct the district court to reconsider these claims and, at a minimum, enter an order that sets forth specific findings of fact and conclusions of law to support its decision disposing of them. Accordingly, we

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


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Valorie Vega, District Judge
JoNell Thomas
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁰See Evans, 117 Nev. at 621, 28 P.3d at 507.