

IN THE SUPREME COURT OF THE STATE OF NEVADA

BILL JOSEPH STONE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46405

FILED

JUN 22 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying a second postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant Bill Stone was convicted on July 15, 1997, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon, conspiracy to commit robbery, and attempted robbery with the use of a deadly weapon. The district court sentenced him to serve two consecutive terms of life in prison without the possibility of parole for the murder with the use of a deadly weapon and concurrent terms for the remaining charges. This court affirmed his conviction and sentence on direct appeal.¹

Stone later filed in the district court a proper person postconviction petition for a writ of habeas corpus. The district court dismissed the petition without conducting an evidentiary hearing. This court reviewed approximately fifty-four claims raised by Stone on appeal from the district court's order and affirmed.²

¹Stone v. State, Docket No. 30875 (Order Dismissing Appeal, December 20, 1999).

²Stone v. State, Docket No. 37728 (Order of Affirmance, August 28, 2002).

With the assistance of counsel, Stone filed a second postconviction petition for a writ of habeas corpus in the district court on April 13, 2005, raising a single claim—that the State violated Brady v. Maryland³ by withholding evidence that could have impeached the credibility of State witness Douglas Daugherty during Stone's trial. The alleged evidence was that Daugherty received financial benefits from the State in exchange for his testimony. The district court dismissed Stone's petition, concluding it was procedurally barred for being untimely and successive. This appeal followed.

Stone contends on appeal that the district court improperly denied his claim that the State violated Brady by withholding evidence that would have impeached Daugherty's credibility. We disagree.

Stone's petition was his second petition and was filed over four years after this court issued the remittitur from his direct appeal. His petition was untimely and successive, and his Brady claim was procedurally defaulted unless he could demonstrate good cause and prejudice,⁴ or show that the denial of his claim would result in a fundamental miscarriage of justice.⁵

A meritorious Brady claim has three components: (1) the evidence is favorable to the accused; (2) the evidence was withheld by the State; and (3) the defendant was prejudiced, i.e., the evidence was

³373 U.S. 83 (1963).

⁴NRS 34.726(1); NRS 34.810(1)(b)-(3).

⁵Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

material.⁶ Where a Brady claim is raised in an untimely and/or successive postconviction petition,

[t]he petitioner has the burden of pleading and proving specific facts that demonstrate good cause and prejudice to overcome the procedural bars. Good cause and prejudice parallel the second and third Brady components; in other words, proving that the State withheld the evidence generally establishes cause, and proving that the withheld evidence was material establishes prejudice.⁷

Depending upon whether the defendant made a general or specific request for the withheld evidence, materiality for Brady purposes is demonstrated when there is either a reasonable probability or a reasonable possibility that the result would have been different if the evidence was disclosed.⁸ Here, even if Daugherty's credibility were impeached by disclosure of the alleged Brady evidence, we conclude there is neither a reasonable probability nor possibility that it would have altered the outcome of his trial.

To explain, Daugherty was only one of two witnesses who testified that Stone confessed to the murder. In addition to Daugherty, Louis Myers, who once shared a jail cell with Stone, testified that Stone confessed to him to murdering Benjamin Blonde. Moreover, Christine Sooley, who was Stone's girlfriend, testified that she saw Stone murder Blonde. And Roy Mancha, who was Stone's coconspirator, testified that he

⁶State v. Bennett, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003).

⁷Id. (citing Mazzan v. Warden, 116 Nev. 48, 66-67, 993 P.2d 25, 36-37 (2000)) (other citations omitted).


⁸Jimenez v. State, 112 Nev. 610, 619, 918 P.2d 687, 692 (1996) (citing Roberts v. State, 110 Nev. 1121, 1127-32, 881 P.2d 1, 5-8 (1994)).

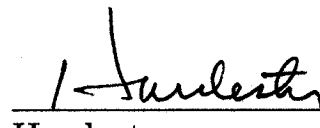
confessed to him to murdering Benjamin Blonde. Moreover, Christine Sooley, who was Stone's girlfriend, testified that she saw Stone murder Blonde. And Roy Mancha, who was Stone's coconspirator, testified that he planned with Stone to rob Blonde, and loaned him the handgun that was eventually used in the murder. Physical evidence in Stone's possession also linked him to the crimes. This included blood-stained clothes, bullets, and Blonde's belongings.

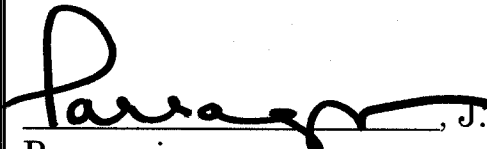
Thus, even if Daugherty's credibility had been impeached with the alleged Brady evidence, overwhelming evidence still supported Stone's conviction. The alleged Brady evidence is not material because there is neither a reasonable probability nor possibility that the evidence would have altered the outcome of Stone's trial. Because Stone failed to show that the alleged Brady evidence was material, he similarly failed to demonstrate the necessary prejudice to excuse the procedural default. Therefore, the district court properly dismissed his petition. Accordingly, we

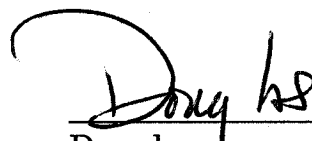
ORDER the judgment of the district court AFFIRMED.

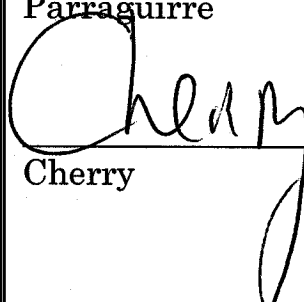

_____, C.J.
Maupin



_____, J.
Gibbons


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Jackie Glass, District Judge
Federal Public Defender/Las Vegas
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk