

IN THE SUPREME COURT OF THE STATE OF NEVADA

GENARO C. MARTINO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46889

FILED

DEC 05 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

Appellant Genaro C. Martino was convicted, pursuant to a jury verdict, of first-degree murder and three counts of forgery. He was sentenced to life in prison with the possibility of parole for murder and three concurrent terms of eight years in prison for the forgery counts, to be served consecutively to the murder count. This court dismissed Martino's appeal from his judgment of conviction.¹

On January 4, 1999, Martino filed a proper person post-conviction petition for a writ of habeas corpus, which the district court denied after appointing counsel and conducting an evidentiary hearing. This court affirmed the district court's order denying Martino's petition.²

¹Martino v. State, Docket No. 28299 (Order Dismissing Appeal, January 22, 1998).

²Martino v. State, Docket No. 35913 (Order of Affirmance, September 16, 2002).

On November 22, 2005, Martino filed a second petition, which the district court dismissed. This appeal followed.

In his sole claim on appeal, Martino argues that the district court erred in dismissing his claim that his counsel was ineffective for failing to investigate his case in various ways. In his appeal from the denial of his first habeas petition, Martino raised a more general claim that his counsel was ineffective for failing to investigate his case, and this court concluded that the district court properly denied it. Therefore, the doctrine of the law of the case precludes further consideration of the claim.³ "The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings."⁴

Moreover, Martino filed the instant petition more than seven years after the remittitur issued in his direct appeal.⁵ Therefore, his petition was untimely filed.⁶ And his petition was successive because he previously filed a post-conviction habeas petition in the district court.⁷ His petition was procedurally barred absent a demonstration of good cause and actual prejudice.⁸ Martino explains that he had no obligation to show

³Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975).

⁴Id. at 316, 535 P.2d at 799.

⁵Remittitur from Martino's direct appeal issued on February 10, 1998.

⁶NRS 34.726(1).

⁷NRS 34.810(2).

⁸NRS 34.726(1); NRS 34.810(3).

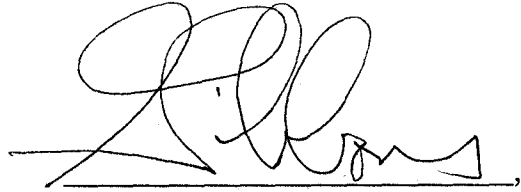
good cause and prejudice because this court inconsistently applies procedural default rules. This court has previously addressed a similar claim and rejected it.⁹ In Riker, this court reiterated that the statutory procedural default rules are mandatory and that any prior inconsistent application of these rules does not provide a basis to ignore them.¹⁰ Therefore, we conclude that Martino failed to overcome the procedural default rules on this basis.

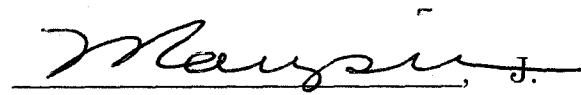
Martino further argues that he is immune from showing good cause and prejudice because the district court's failure to consider his claims resulted in a fundamental miscarriage of justice. Under the umbrella of inadequate investigation, Martino charges that his counsel was ineffective for failing to locate and impeach a prosecution witness, not developing the testimony of several favorable defense witnesses, not challenging the reliability of a mine shaft search, and failing to introduce additional evidence that the victim was missing rather than deceased. Martino argues that had counsel performed as he now suggests, the jury would likely have acquitted him. However, we conclude that even assuming counsel had investigated his case as he suggests and introduced the evidence he now desires, Martino has not shown that these matters would have altered the outcome of his trial. Therefore, we conclude that he has not demonstrated any miscarriage of justice.

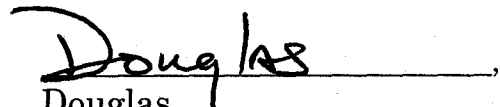
⁹See State v. Dist. Ct. (Riker), 121 Nev. 225, 236, 112 P.3d 1070, 1077 (2005).

¹⁰Id.

Having reviewed the record, we conclude that the district court did not err in dismissing Martino's petition. Accordingly, we ORDER the judgment of the district court AFFIRMED.


Gibbons, J.


Maupin, J.


Douglas, J.

cc: Hon. John P. Davis, District Judge
Federal Public Defender/Las Vegas
Attorney General George Chanos/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk