

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTURO ANDRADE GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47075

FILED

AUG 01 2006

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On May 12, 1999, the district court convicted appellant, pursuant to a jury verdict, of counts I and II: driving and/or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor; counts III and IV: reckless driving; counts V and VI: leaving the scene of an accident; count VII: operation of a motor vehicle without security; and count VIII: unlawful open container in a motor vehicle. The district court sentenced appellant to serve terms totaling 138 to 348 months in the Nevada State Prison.¹ This court affirmed appellant's judgment of conviction and sentence on direct appeal.² The remittitur issued on March 14, 2001.

On January 4, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹The district court dismissed counts III and IV: reckless driving.

²Garcia v. State, 117 Nev. 124, 17 P.3d 994 (2001).

State opposed the petition. Pursuant to NRS 34.750, the district court appointed counsel, but pursuant to NRS 34.770, declined to conduct an evidentiary hearing. On July 5, 2002, the district court denied appellant's petition. This court affirmed the district court's denial.³

On December 9, 2005, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On March 6, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than four years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶

³Garcia v. State, Docket No. 39929 (Order of Affirmance, February 5, 2003).

⁴See NRS 34.726(1).

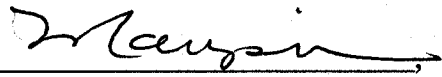
⁵See NRS 34.810(2). Appellant's petition was successive because several of the claims were previously litigated on direct appeal and in the first post-conviction petition for a writ of habeas corpus. The doctrine of the law of the case prevents further litigation of claims previously considered and rejected by this court. See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975). To the extent that appellant raised any new claims, these claims could have been raised earlier, and appellant failed to demonstrate good cause and prejudice sufficient to overcome his failure to raise the claims earlier. See NRS 34.810(1)(b)(2); NRS 34.810(2), (3).

⁶See NRS 34.726(1); NRS 34.810(3).

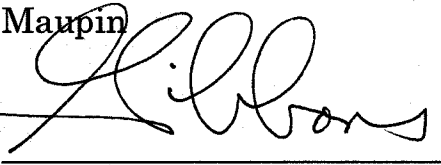
In an attempt to excuse his procedural defects, appellant argued that he was required to file his petition in order to exhaust state remedies. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause to excuse his procedural defects.⁷ Filing a petition for the purpose of exhaustion is not good cause. Thus, we affirm the order of the district court.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

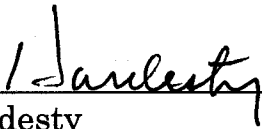
ORDER the judgment of the district court AFFIRMED.



Maupin J.



Gibbons J.



Hardesty J.

⁷See Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994) (holding that good cause must be an impediment external to the defense).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Lee A. Gates, District Judge
Arturo Andrade Garcia
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk