IN THE SUPREME COURT OF THE STATE OF NEVADA

KOU LO VANG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47495

FILED

DEC 21 2006

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

ORDER OF AFFIRMANCE

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; Donald M. Mosley, Judge.

On November 19, 1986, the district court convicted appellant, pursuant to a jury verdict, of one count each of conspiracy to commit murder, first-degree murder, conspiracy to commit murder with the use of a deadly weapon and first-degree murder with the use of a deadly weapon. The district court sentenced appellant to serve three consecutive terms of life in the Nevada State Prison with the possibility of parole for the murder counts and the deadly weapon enhancement, plus two consecutive terms of six years for the conspiracy counts. This court dismissed appellant's appeal from his judgment of conviction and sentence.[1] The remittitur issued on December 13, 1988.

[1]Vang v. State, Docket No. 17993 (Order Dismissing Appeal, November 22, 1988).

On May 5, 1991, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Counsel was appointed, and counsel filed a supplemental petition for a writ of habeas corpus. The State opposed the petition and appellant filed a response. On May 8, 1996, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.[2]

On December 6, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed and moved to dismiss the petition arguing that the petition was procedurally barred. Moreover, the State specifically pleaded laches. Appellant filed a reply to the State's opposition and motion to dismiss. 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 May 4, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition approximately seventeen years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.[3] Moreover, appellant's petition was successive because he had previously filed a post-conviction petition

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[2]Vang v. State, Docket No. 28905 (Order Dismissing Appeal, July 21, 1998).

[3]See NRS 34.726(1).

for a writ of habeas corpus.[4] Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.[5] Good cause must be an impediment external to the defense.[6] Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.[7]

Appellant raised four claims in an attempt to excuse his procedural defects. Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition as procedurally barred.

First, appellant claimed that good cause supported the filing of the instant petition because he did not understand the English language at the time his first petition was filed. This claim is belied by the record.[8] The record on appeal indicates that appellant was able to participate at trial without the aid of an interpreter and testified on his own behalf. The record further indicates that prior to his trial appellant also acted as an interpreter for other Hmong individuals. Because appellant's claim that

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[4]See NRS 34.810(1)(b)(2); NRS 34.810(2). To the extent that appellant raised new claims, these claims constituted an an abuse of the writ. See NRS 34.810(2).

[5]See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

[6]See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

[7]See NRS 34.800(2).

[8]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

he did not understand the English language is belied by the record, this claim did not constitute good cause to excuse his procedural defects.

Second, appellant claimed that good cause supported the filing of the instant petition because he did not know that the deadly weapon enhancement was illegal when he filed his first petition. Appellant's lack of legal training does not constitute good cause for filing a successive post-conviction petition for a writ of habeas corpus.[9] Further, imposition of the deadly weapon enhancement was not illegal because the jury found the facts supporting the use of a deadly weapon.[10]

Third, appellant claimed that good cause supported the filing of the instant petition because his appellate counsel did not challenge the deadly weapon enhancement on direct appeal. Appellant failed to demonstrate that an impediment external to the defense prevented him from raising the claim in his first post-conviction petition for a writ of habeas corpus.[11]

Fourth, appellant claimed that good cause supported the filing of the instant petition because he is actually innocent. Specifically,

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[9]See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988)

[10]See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is " the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original).

[11]See Lozada, 110 Nev. 349, 871 P.2d 944.

appellant argued that he was not present when Koua Thor was shot and he did not know that Lue Vue was armed, and therefore the deadly weapon enhancement was improperly applied to him.

Appellant failed to demonstrate that he is actually innocent.[12] Appellant was convicted of first-degree murder with the use of a deadly weapon under a theory of aiding and abetting. Testimony was presented at trial that appellant conspired with Vue and planned the killing of Thor. Specifically, appellant gave Thor the keys to Vue's apartment, told Thor to go to Vue's apartment and told Vue to shoot and kill Thor when Thor entered the apartment. Testimony was also presented that appellant was present when Vue purchased the gun used to kill Thor, appellant told Vue which gun to purchase, and appellant gave Vue money to purchase the gun. Under Nevada law, both an aider and abettor to a crime and the actual perpetrator of the crime are equally culpable.[13] Because the record on appeal supports appellant's conviction for first-degree murder with the use of a deadly weapon as an aider and abettor, the deadly weapon enhancement was properly applied to appellant. Appellant presented no new evidence in his petition that would undermine his conviction for first-degree murder with the use of a deadly weapon as an aider and abettor.

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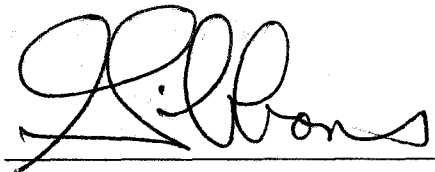
[12]See Calderon v. Thompson, 523 U.S. 538, 559 (1998) (holding that a petitioner claiming actual innocence must show "'it is more likely than not that no reasonable juror would have convicted him in light of the new evidence' presented in his habeas petition" (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)).

[13]See NRS 195.020.

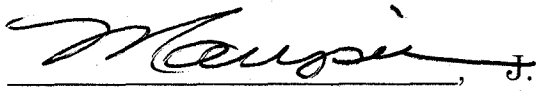
Accordingly, we conclude appellant failed to demonstrate that he is actually innocent and, therefore, failed to demonstrate good cause to excuse his procedural defects.

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.[14] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Gibbons



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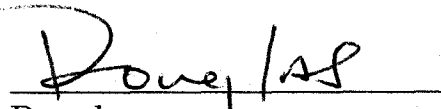

_____, J.
Douglas

cc: Hon. Donald M. Mosley, District Judge
Kou Lo Vang
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[14]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).