IN THE SUPREME COURT OF THE STATE OF NEVADA

JESUS CELESTIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48407

FILED

JUN 22 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On March 22, 2001, the district court convicted appellant Jesus Celestin, pursuant to a jury verdict, of robbery, first-degree kidnapping with substantial bodily harm, and first-degree murder, each with the use of a deadly weapon, as well as burglary while in possession of a firearm and third-degree arson. The district court sentenced Celestin to serve concurrent and consecutive terms totaling 71 years to life in prison. This court affirmed the judgment of conviction and sentence on direct appeal.[1] The remittitur issued on November 5, 2002.

On July 10, 2006, Celestin filed in the district court a postconviction petition for a writ of habeas corpus. The State moved to dismiss the petition as untimely filed and therefore procedurally barred.

[1]Celestin v. State, Docket No. 37788 (Order of Affirmance, October 8, 2002).

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The district court granted the State's motion and dismissed the petition. This appeal followed.

A postconviction petition for a writ of habeas corpus must be filed within one year after this court issues its remittitur from the petitioner's direct appeal.[2] Celestin filed his petition more than three years after this court issued the remittitur from his direct appeal. Thus, the petition was untimely. Celestin's petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.[3] Celestin raises three good cause arguments.

First, he contends that the United States Supreme Court's decision in Sanchez-Llamas v. Oregon[4] created a new legal claim that was previously unavailable to him:[5] that his statements to police were involuntary because he was not told after his arrest that he could contact his consulate, in violation of his rights under Article 36 of the Vienna Convention. We agree with the district court that Sanchez-Llamas did not create a new legal claim; it merely noted in dicta that a defendant may

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[2]NRS 34.726(1).

[3]See id.

[4]___ U.S. ___, 126 S.Ct. 2669 (2006).

[5]See Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001) (holding that good cause may be established when the legal basis for a claim was not reasonably available to the petitioner within the one-year filing deadline).

cite to Article 36 as a factor in the analysis of voluntariness.[6] We therefore conclude the district court did not err in rejecting this argument.

Second, Celestin contends that neither his trial nor appellate counsel discussed postconviction relief with him. However, as Celestin concedes, counsel's failure to so advise his or her client "does not alone constitute good cause to overcome the time-bar of NRS 34.726(1)."[7] Celestin points us to the Ninth Circuit Court of Appeals for the proposition that tolling of a time bar may be appropriate when a Spanish-speaking petitioner has no access to Spanish-language materials in the prison law library.[8] This court has held that "[t]o show 'good cause,' a petitioner must demonstrate that an impediment external to the defense prevented him from raising his claims earlier."[9] While such an impediment may be shown where "some interference by officials made compliance [with the procedural rule] impracticable,"[10] Celestin does not argue that such is the

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[6]See Sanchez-Llamas, ___ U.S. at ___, 126 S.Ct. at 2682 ("Finally, suppression is not the only means of vindicating Vienna Convention rights. A defendant can raise an Article 36 claim as part of a broader challenge to the voluntariness of his statements to police. If he raises an Article 36 violation at trial, a court can make appropriate accommodations to ensure that the defendant secures, to the extent possible, the benefits of consular assistance. Of course, diplomatic avenues-the primary means of enforcing the Convention-also remain open.").

[7]Dickerson v. State, 114 Nev. 1084, 1088, 967 P.2d 1132, 1134 (1998).

[8]Mendoza v. Carey, 449 F.3d 1065, 1069 (9th Cir. 2006).

[9]Pellegrini, 117 Nev. at 886-87, 34 P.3d at 537.

[10]Id. at 887, 34 P.3d at 537 (quotation marks and citations omitted).

case here. He merely argues that his counsel's failure to advise him of the possibility of postconviction relief, combined with his limited education and English-language ability, caused the delay. This is not sufficient to establish good cause, and we conclude the district court did not err in rejecting this argument.

Third, Celestin argues that this court's recent decision in Mitchell v. State, which held that our abandonment in Sharma v. State[11] of the "natural and probable consequences" doctrine applied applied to cases that were final when it was decided,[12] created a new legal claim that was previously unavailable to him and requires us to overturn the deadly weapon enhancements against him. However, as we indicated in Mitchell, Sharma has no bearing on application of the deadly weapon enhancement to an unarmed offender; rather, the relevant law on that point is contained in Anderson v. State's[13] discussion of constructive possession of a deadly weapon.[14] According to Celestin, his jury was instructed that co-conspirator liability was defined as "criminal responsibility 'where the unlawful act is the probable and natural consequence of the common design.'" But this was not the deadly weapon instruction; subsequently, Celestin's jury was properly instructed on constructive possession pursuant to Anderson v. State; this instruction did not mention the

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[11]118 Nev. 648, 56 P.3d 868 (2002).

[12]122 Nev. ___, ___, 149 P.3d 33, 38 (2006).

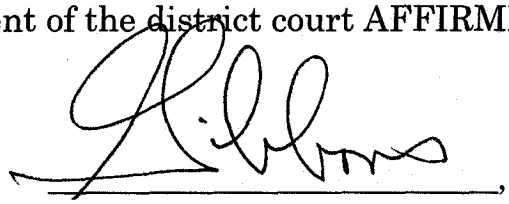
[13]95 Nev. 625, 600 P.2d 241 (1979).

[14]122 Nev. at ___, 149 P.3d at 38.

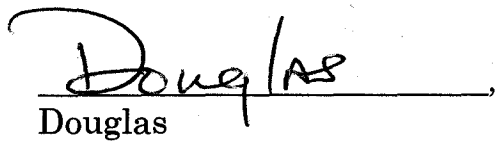
natural and probable consequences doctrine. Thus, we conclude the district court did not err in rejecting this good cause argument.

Having reviewed Celestin's arguments and concluded he is not entitled to relief, we

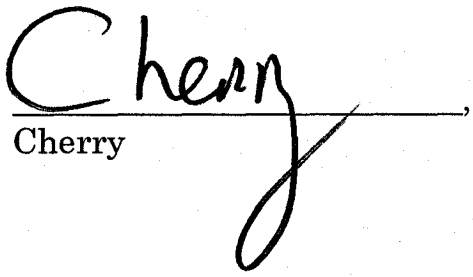
ORDER the judgment of the district court AFFIRMED.



_____, J.
Gibbons



_____, J.
Douglas



_____, J.
Cherry

cc: Hon. Sally L. Loehrer, District Judge
Megan C. Hoffman Sacksteder
JoNell Thomas
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk