

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES DAVID OFELDT,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 49679

FILED

FEB 13 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On February 1, 2005, the district court convicted appellant, pursuant to a guilty plea, of eight counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve multiple terms totaling four to fifteen years in the Nevada State Prison. Appellant did not file a direct appeal.

On January 31, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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

April 25, 2007, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately two years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.¹ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.² In an attempt to demonstrate cause for the delay, appellant argued that he lacked an understanding of the law and "just learned about a Brady violation."³

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 adequate cause to excuse his procedural defects. When a Brady claim is raised in an untimely post-conviction petition for a writ of habeas corpus, the petitioner has the burden of pleading and proving specific facts that demonstrate good cause and actual prejudice to overcome the procedural bar; specifically, good cause and actual prejudice in the context of a Brady claim can be established by demonstrating that

¹See NRS 34.726(1).

²See id.

³Brady v. Maryland, 373 U.S. 83 (1963).


the evidence was favorable to the defendant, was withheld by the State and was material.⁴

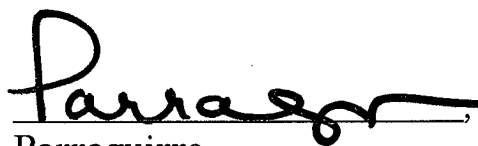
Appellant claimed that the State violated Brady by failing to provide him with currency found at the crime scene, incident reports, and surveillance video. Appellant failed to demonstrate that the pieces of evidence existed, or, if they existed, that they were not provided to him or to his counsel. Specifically at a hearing on the motion to confirm the trial, the State indicated that appellant's former counsel received everything the State had in CR040649 and this case, because the two cases were interrelated. The only evidence appellant did not have were two surveillance videotapes, which appellant could not have in prison. Accordingly, the district court agreed to move appellant to the Washoe County Jail prior to trial to assist appellant in possessing and using these materials. Further, because appellant failed to demonstrate that disclosure of the evidence would have resulted in a reasonable probability of a different outcome at trial, appellant failed to demonstrate that the evidence was material. Therefore, appellant failed to demonstrate that his Brady claims constituted good cause and prejudice to overcome the procedural bar.

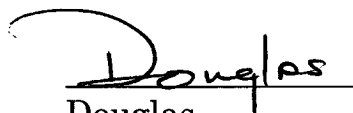
⁴See Mazzan v. Warden, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000); see also NRS 34.726(1).

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Steven P. Elliott, District Judge
James David Ofeldt
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk