

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY LEE REDMAN A/K/A
TIMOTHY REDMEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50348

FILED

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TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY T. L. Warado
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus in a death penalty case. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

Appellant Timothy Lee Redman shot and beat to death Max Biederman, disfiguring his face with a piece of wrought iron railing and amputating his hands to preclude identification. A jury convicted him of first-degree murder with the use of a deadly weapon and robbery with the use of a deadly weapon. However, the jury was unable to reach a verdict on the sentence, and a three-judge panel sentenced Redman to death. This court affirmed the judgment of conviction and death sentence. Redmen v. State, 108 Nev. 227, 828 P.2d 395 (1992), overruled in part by Alford v. State, 111 Nev. 1409, 906 P.2d 714 (1995).¹

¹At various times throughout proceedings related to these crimes, "Redman" has also been spelled "Redmen."

Redman filed a timely proper person petition for post-conviction relief pursuant to NRS Chapter 177. After the district court denied appointment of counsel and Redman's proper person post-conviction petition, this court remanded the matter for the appointment of counsel, as required under NRS 34.820(1)(a), and for further proceedings. Redmen v. State, Docket No. 25781 (Order of Remand, November 28, 1995). On remand, the district court appointed counsel, who filed a post-conviction petition in April 1996, which the district court denied without an evidentiary hearing. This court dismissed Redman's appeal. Redmen v. State, Docket No. 33436 (Order Dismissing Appeal, July 7, 2000).

Redman filed the instant post-conviction petition on May 12, 2006, alleging 49 claims for relief. With the exception of a claim under McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004), the State opposed the petition on the grounds that it was untimely filed, successive, barred by laches, and that many of the claims were barred by the doctrine of the law of the case. The district court denied Redman's petition as procedurally barred² on September 14, 2007, without conducting an evidentiary hearing, excepting from procedural default Redman's claims implicating McConnell v. State, 120 Nev. 1043, 102 P.3d 606 (2004), and Brady v. Maryland, 373 U.S. 83 (1963). This appeal followed.

Redman raises numerous claims alleging trial error and the ineffective assistance of trial, appellate, and post-conviction counsel. The primary issue before the court, however, is whether the district court erred by denying the bulk of the petition as procedurally barred. Redman also

²The State specifically pleaded laches pursuant to NRS 34.800(2); however, the district court did not explicitly address that procedural bar.

argues that the district court erred by denying his claim that McConnell mandates reversal of his death sentence and his claim that the State withheld evidence in violation of Brady.

We conclude that the district court correctly applied procedural default rules and that Redman failed to demonstrate good cause and prejudice to overcome any of the applicable procedural bars. We further conclude that the district court correctly denied his McConnell claim because although Redman demonstrated good cause for not raising this claim previously, he failed to show prejudice. And finally, we conclude that the district court properly denied relief on the Brady claim. Accordingly, the district court did not err by denying Redman's petition.

Application of procedural bars

Redman argues that the district court erred by denying his numerous challenges to the actions of the trial court and trial and appellate counsel and his claim that post-conviction counsel was ineffective for failing to raise these challenges in his first post-conviction petition. The district court concluded that all of Redman's claims were procedurally barred pursuant to NRS 34.726 and that many of the claims were also procedurally barred pursuant to NRS 34.810 because they could have been raised on direct appeal or in a prior post-conviction petition or were barred by the law of the case doctrine. The district court further concluded that even if Redman had established good cause, he failed to demonstrate prejudice. Having carefully considered Redman's claims, we conclude that the district court did not err by denying them as

procedurally barred.³ We address Redman's specific challenges to the application of the procedural bars below.

³The following are claims the district court concluded were procedurally barred: (1) Redman was denied a speedy trial; (2) trial counsel failed to challenge the voluntariness of his confession; (3) trial counsel should not have waived the preliminary hearing; (4) trial counsel conducted inadequate voir dire and failed to object to an unconstitutional jury selection method; (5) the district court improperly allowed collective questioning of prospective jurors during voir dire; (6) Redman was improperly excluded from critical stages of the trial; (7) trial counsel failed to present any defense at the guilt phase; (8) trial counsel failed to secure an investigator, (9) trial counsel failed to investigate and present evidence of Redman's mental health and competency; (10) trial counsel failed to effectively cross-examine Rial; (11) trial counsel failed to preserve the testimony of a defense witness; (12) the district court improperly admitted photos of Biederman's body; (13) the district court improperly refused to allow the defense to stipulate to the mutilation aggravator to preclude admission of photographs of Biederman's body; (14) the district court improperly admitted the testimony of three unendorsed witnesses; (15) felony murder was not proved; (16) the district court improperly instructed on the felony-murder rule because the indictment did not allege felony murder; (17) the district court erred by giving the statutorily mandated reasonable doubt instruction; (18) the district court gave erroneous instructions on premeditation, felony murder, weighing of aggravators and mitigators, anti-sympathy, and the definition of sentence of imprisonment; (19) Nevada's common-law definitions of capital murder are unconstitutional; (20) trial counsel failed to make a closing argument during the guilt phase; (21) trial counsel failed to challenge the State's filing of a notice to seek the death penalty on the first day of trial; (22) trial counsel failed to adequately investigate and present mitigating evidence, including his prison and "West Virginia background records" or employ an investigator; (23) trial counsel failed to obtain a mental health evaluation as mitigation; (24) trial counsel failed to prepare Redman for his penalty phase testimony and challenge his placement in a lockdown cell; (25) the district court improperly placed Redman in a lockdown cell before his penalty hearing testimony; (26) trial counsel failed to object to the posting of correctional officers behind Redman; (27) the district court

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improperly used shackles and tape to restrain Redman and posted correctional officers behind him; (28) trial counsel failed to object to the prosecutor's questioning of Redman during the penalty phase regarding four dismissed charges; (29) trial counsel inadequately prepared the defense expert psychiatrist; (30) the district court improperly admitted "future dangerousness" evidence; (31) trial counsel failed to challenge the admission of "future dangerousness" evidence or effectively rebut this evidence; (32) the prosecutor committed misconduct by commenting on Redman's right to remain silent by mentioning his lack of remorse, filing the notice of intent to seek the death penalty on the first day of trial, calling unendorsed witnesses to testify, referring to "undocumented comments" relied on by the district court, and questioning Redman about four dismissed charges; (33) trial counsel inadequately prepared for the three-judge panel penalty hearing; (34) trial counsel failed to "humanize" Redman; (35) insufficient evidence supported the aggravators; (36) the district court improperly admitted evidence of uncharged misconduct during the penalty hearing; (37) the aggravators are invalid because they were based on the same facts; (38) the elements of capital eligibility were not found beyond a reasonable doubt; (39) the district court failed to properly instruct on the elements of a capital offense, (40) the jury was misled to believe that it could only consider mitigators found unanimously; (41) Redman's conviction and sentence are invalid because they are based on an involuntary confession; (42) the cumulative impact of trial errors and trial and appellate counsel deficiencies render the conviction and sentence invalid; (43) the district court erroneously refused to appoint new counsel during trial; (44) the district court erred by refusing to grant a continuance during the penalty hearing, resulting in a conflict of interest with counsel; (45) the State interfered with counsel's ability to litigate post-conviction claims; (46) the district court erroneously refused to appoint new appellate counsel; (47) the Clark County Public Defender's Office operated under a conflict of interest because the district court and this court denied counsel's requests to be relieved from representing Redman on appeal, despite counsel's professed inability to comply with the briefing schedule; (48) Redman's death sentence was unconstitutional because of the lengthy delay in carrying out Redman's execution, it was imposed by an impartial three-judge panel, he received

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Redman specifically challenges the district court's application of procedural default rules on five grounds—(1) NRS 34.726(1) does not apply because his petition was filed before this court determined that the statute applied to successive petitions and any delay in filing the petition was not his fault, (2) he overcame any presumption of prejudice under NRS 34.800(2), (3) this court's inconsistent application of procedural default rules precluded application of those rules to his petition, (4) failure to consider his claims on the merits resulted in a miscarriage of justice, and (5) this court's holding that three-judge panels are unconstitutional excuses any procedural default.

NRS 34.726

NRS 34.726 requires that a post-conviction petition challenging a conviction or sentence be filed within one year after entry of the judgment, or if a timely appeal is filed, after this court issues its remittitur. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998). A delay may be excused by a showing of "good cause." NRS

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inadequate appellate review of the death sentence, he may become incompetent, and his trial, sentencing, and appellate review were conducted by elected judges; (49) the death penalty is unconstitutional because Nevada's death penalty scheme is arbitrary and capricious, violates the International Covenant on Civil and Political Rights, creates a risk that innocent persons will be executed; and (50) lethal injection constitutes cruel and unusual punishment. He also asserted that his first post-conviction counsel was ineffective in failing to raise all of these claims.

34.726(1) provides that good cause requires showing “[t]hat delay is not the fault of the petitioner” and “[t]hat dismissal of the petition as untimely will unduly prejudice the petitioner.”

Redman’s challenge to the application of NRS 34.726(1) is twofold—(1) the statute did not apply to successive petitions at the time his alleged default occurred and (2) the delay in filing the petition was not his fault as contemplated by the statute.

As to Redman’s first contention, he asserts that the statute does not apply to him because until this court issued Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001), which was decided after the alleged default occurred, no authority suggested that NRS 34.726 applied to successive petitions. Therefore, according to Redman, he was not given adequate notice “to satisfy federal constitutional due process standards that would allow [NRS 34.726(1)] to be applied to cases involving alleged defaults that allegedly occurred before the Pellegrini decision.” However, long before Pellegrini was decided, this court had applied NRS 34.726 to successive petitions. See, e.g., Bennett v. State, 111 Nev. 1099, 1103, 901 P.2d 676, 679 (1995). Moreover, as this court explained in Pellegrini, “NRS 34.726 provides no exception for successive petitions, and we conclude that the plain language of the statute indicates that it applies to all petitions filed after its effective date of January 1, 1993.” 117 Nev. at 874, 34 P.3d at 529. Considering this court’s long-standing application of NRS 34.726 to successive petitions and the plain language of that statute, we are unpersuaded by Redman’s argument in this regard.

As to the second prong of Redman’s argument, he complains that the delay in filing the petition was not his fault within the meaning of NRS 34.726(1). In this, he argues that the plain language of the statute

evinces the Legislature's intent that "the petitioner himself must act or fail to act to cause the delay." Redman supports his contention by arguing that in Pellegrini, "this Court adopted the subjective standard arising from the legislature's use of the term fault by holding that counsel's failure to act cannot be considered the petitioner's fault under [NRS 34.726]." Accordingly, Redman contends, "[t]his court must apply the same subjective fault standard as applied in Bennett, as interpreted in Pellegrini, and find that any delay in the filing of the current petition was not appellant's fault."

To the extent Redman argues that because he did not personally cause the delay, NRS 34.726 cannot apply, we conclude that his argument lacks merit. This court has interpreted NRS 34.726(1) as requiring "a petitioner [to] show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Redman's view that NRS 34.726(1) contemplates only delay personally caused by a petitioner is untenable. Moreover, even assuming this court accepted Redman's interpretation of NRS 34.726(1), he waited nearly six years after this court affirmed the denial of his first habeas petition to file the instant petition, and he offers no explanation why he waited so long to file the petition.

To the extent Redman contends that post-conviction counsel's ineffectiveness in failing to raise the claims addressed in this petition constituted good cause for the delay in raising those claims, we conclude that his argument lacks merit. When the appointment of post-conviction counsel is statutorily mandated, the ineffective assistance of post-conviction counsel may provide good cause for filing a successive petition.

Crump v. Warden, 113 Nev. 293, 303-04, 934 P.2d 247, 253 (1997); McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996). But the petition must still be filed in a timely fashion. See State v. Dist. Ct. (Riker), 121 Nev. 225, 235, 112 P.3d 1070, 1077 (2005). As this court explained in Hathaway, “to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted.” 119 Nev. at 252-53, 71 P.3d at 506; see also Edwards v. Carpenter, 529 U.S. 446, 452-53 (2000) (concluding that claim of ineffective assistance of counsel cannot serve as cause for another procedurally defaulted claim). In other words, a petitioner must demonstrate cause for raising an ineffective assistance of counsel claim in an untimely fashion.

Here, Redman fails to explain the alleged deficiencies by post-conviction counsel that precluded him from filing his second post-conviction petition until nearly six years after this court resolved his appeal from the denial of his first post-conviction petition. Nor did Redman show prejudice to excuse the procedural bar under NRS 34.726(1).

Application of NRS 34.800

Redman contends that NRS 34.800(2) should not operate to bar his petition because he overcame the presumption of prejudice to the State. NRS 34.800 allows the dismissal of a post-conviction petition if the delay in filing it prejudices the State in responding to the petition or in its ability to retry the petitioner. The statute also creates a rebuttable presumption of prejudice to the State based upon laches. To rebut the presumption, the petitioner must demonstrate a fundamental miscarriage of justice. Little v. Warden, 117 Nev. 845, 853, 34 P.3d 540, 545 (2001). Redman, however, failed to allege any particular factual or legal

circumstances suggesting that he rebutted the presumption of prejudice in this instance. Although it is unclear from the district court's order whether it considered NRS 34.800 in denying Redman's petition, to the extent that it did, we conclude that the petition was procedurally barred under that statute.

Alleged inconsistent application of procedural default rules

Redman argues that he should be excused from procedural default rules because this court arbitrarily and inconsistently applies them. This court has previously rejected this precise claim, concluding, after painstaking analysis, that it does not arbitrarily "ignore[] procedural default rules" and that "any prior inconsistent application of statutory default rules would not provide a basis for this court to ignore the rules, which are mandatory." State v. Dist. Ct. (Riker), 121 Nev. 225, 236, 112 P.3d 1070, 1077 (2005). We conclude that Redman's claim lacks merit.

Redman also contends that this court inconsistently applies the law of the case doctrine, and therefore any claims previously decided should be considered anew. The doctrine of the law of the case provides that "[t]he law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same." Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969), vacated in part, 408 U.S. 935 (1972)). However, the doctrine is not absolute, and this court has the discretion to "revisit the wisdom of its legal conclusions when it determines that further discussion is warranted." Pellegrini, 117 Nev. at 885, 34 P.3d at 535-36; see Bejarano v. State, 122 Nev. 1066, 1074, 146 P.3d 265, 271 (2006). We reject Redman's suggestion that Pellegrini indicates that this court may arbitrarily disregard the law of the case doctrine. Redman did not

demonstrate that this court has consistently ignored the law of the case doctrine such that his claims should have been considered anew.

Miscarriage of justice to excuse procedural default

Redman contends that the district court erred by denying his petition as procedurally barred because he demonstrated that not considering his petition would result in a miscarriage of justice, particularly with respect to his challenge to the validity of the felony aggravator and his allegation that trial counsel were ineffective for failing to investigate and present additional mitigation evidence. Redman also appears to argue that not considering all the claims he raises in this appeal would result in a miscarriage of justice.

When a petitioner cannot demonstrate good cause, the district court may nonetheless excuse a procedural bar if the petitioner demonstrates that failure to consider the petition would result in a fundamental miscarriage of justice. Pellegrini, 117 Nev. at 887, 34 P.3d at 537. A fundamental miscarriage of justice requires “a colorable showing” that the petitioner is “actually innocent of the crime or is ineligible for the death penalty.” Id. When claiming a fundamental miscarriage based on actual innocence, the petitioner thus “must show that it is more likely than not that no reasonable juror would have convicted him absent a constitutional violation.” Id. In this context, actual innocence means “factual innocence, not mere legal insufficiency.” Mitchell v. State, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006) (internal quotation marks omitted). Similarly, when claiming a fundamental miscarriage based on ineligibility for the death penalty, the petitioner “must show by clear and convincing evidence that, but for a constitutional error, no reasonable

juror would have found him death eligible.” Pellegrini, 117 Nev. at 887, 34 P.3d at 537.

As explained below, although we conclude that Redman demonstrated good cause to excuse his delay in challenging the felony aggravator, we conclude that he failed to establish prejudice. Therefore, respecting this claim, miscarriage of justice principles are not at play. As to his remaining claims, we conclude that he failed to demonstrate a fundamental miscarriage of justice as none of these claims establish a “colorable showing” of actual innocence sufficient to overcome the good-cause requirement. Therefore, the district court did not err by denying his petition because he did not demonstrate a fundamental miscarriage of justice.

Unconstitutionality of three-judge panel as excuse for procedural default

Redman contends that the district court erred by denying his petition as procedurally barred because this court has subsequently concluded that three-judge panel penalty hearings are unconstitutional. Therefore, according to Redman, any procedural bars precluding review of the instant petition should be disregarded.

In Ring v. Arizona, 536 U.S. 584, 609 (2002), the United States Supreme Court held that a capital sentencing scheme that allows aggravators to be determined by a judge rather than a jury violates the Sixth Amendment right to a jury trial. However, Ring is not retroactive. See Schriro v. Summerlin, 542 U.S. 348, 358 (2004); Colwell v. State, 118 Nev. 807, 822, 59 P.3d 463, 473 (2002). Here, Redman’s conviction was final in 1992, well before Ring was decided and his sentencing by a three-judge panel does not operate to overcome applicable procedural bars.

Claims the district court concluded were not procedurally barred

The district court concluded that Redman's claims implicating McConnell and Brady were not procedurally barred but denied those claims after concluding that they lacked merit. We conclude that the district court did not err by denying relief on these claims.

McConnell claim

Redman contends that he is entitled to a new penalty because the felony aggravator must be stricken pursuant to McConnell and the three-judge panel's consideration of that invalid aggravator was not harmless. Despite the district court's determination otherwise, because this claim was appropriate for direct appeal, Redman must demonstrate good cause for his failure to raise it previously and actual prejudice. NRS 34.810(1)(b)(2), (3). Although he demonstrated good cause because McConnell is retroactive, Bejarano v. State, 122 Nev. 1066, 1070, 1076, 146 P.3d 265, 268, 272 (2006), we conclude that he failed to demonstrate actual prejudice.

In McConnell, this court "deem[ed] it impermissible under the United States and Nevada Constitutions to base an aggravating circumstance in a capital prosecution on the felony upon which a felony murder is predicated." 120 Nev. 1043, 1069, 102 P.3d 600, 624 (2004). Here, the State advanced two theories of first-degree murder including felony murder and relied on the same underlying felony (robbery) to support an aggravating circumstance. Because the verdict is silent as to which theory or theories the jury relied on to find Redman guilty of Biederman's murder, the felony aggravator must be stricken pursuant to McConnell. This court may uphold a death sentence based in part on an invalid aggravator either by reweighing the aggravating and mitigating

evidence or by conducting a harmless-error review. See Clemons v. Mississippi, 494 U.S. 738, 741 (1990); Browning v. State, 120 Nev. 347, 364-65, 91 P.3d 39, 51-52 (2004); Leslie v. Warden, 118 Nev. 773, 784, 59 P.3d 440, 448 (2002).

After invalidating the felony aggravator, three remain—(1) the murder involved the mutilation of the victim, (2) Redman was under a sentence of imprisonment when he murdered Biederman, and (3) Redman had been previously convicted of a felony involving the use or threat of violence (assault during the commission of a felony). To support the mutilation aggravator alleged, the State presented evidence that Biederman died from a massive crush injury to his head and had suffered three gunshot wounds to his face and that after Biederman died, Redman amputated Biederman's hands and attempted to cut out his teeth to prevent Biederman's identification. See Byford v. State, 116 Nev. 215, 241, 994 P.2d 700, 717 (2000) (concluding that postmortem mutilation falls within the purview of NRS 200.033(8)). To support the underlying sentence-of-imprisonment aggravator, the State established through the testimony of a law enforcement officer that Redman was on parole at the time he killed Biederman for offenses committed in West Virginia, including breaking and entering, felonious jail breaking, and assault during the commission of a felony. See Jones v. State, 107 Nev. 632, 636, 817 P.2d 1179, 1182 (1991) (holding that person who is on parole is "under sentence of imprisonment" for purposes of aggravator set forth in NRS 200.033(1)); Nevius v. State, 101 Nev. 238, 243, 699 P.2d 1053, 1056 (1985). And to support the prior-violent-felony aggravator, the State established that Redman had a prior conviction for assault during the commission of a felony, wherein during Redman's escape from a West

Virginia jail, he threatened to kill a deputy sheriff and punched the deputy sheriff in the stomach, bruised his spleen, and fractured several of his ribs.

In mitigation, Redman presented testimony about his troubled childhood. In particular, Redman's mother testified in detail about the physical and mental abuse he suffered at the hands of his parents, including occasions where his mother ordered him to stand in a corner for hours with his knees bent and his father's threat to remove Redman's hands with a chainsaw for stealing. His mother also described familial alcohol and drug abuse and mental problems. A childhood neighbor disclosed that Redman's parents were frequently away from home, leaving Redman with the primary responsibility of taking care of his three younger siblings. She also revealed that Redman's parents yelled at each other frequently and that on one occasion, Redman's mother was so upset that she threatened to kill her children and herself. A psychiatrist testified that Redman was angry with Biederman because Redman perceived that Biederman posed a sexual threat to his girlfriend, Melissa Rial. The psychiatrist concluded that Redman was "willing to let the State help him commit suicide" and described Redman as "very naïve and almost defenseless," depressed, and burdened with low self-esteem but having a sense of wanting to protect other people.

Redman testified on his own behalf, describing Biederman's murder in chilling detail. His testimony was consistent with the evidence produced at the guilt phase, adding that Biederman asked him to arrange for Rial to meet Biederman in his hotel room. Redman believed that Biederman wanted to have sex with Rial and that Biederman's proposal "hit him pretty hard" because Redman loved Rial. However, he explained that when he retrieved Biederman's gun from his van, he thought that "maybe

somewhere in the back of my mind I was planning to do what I did.” He described feeling numb and “no emotion” when he killed Biederman.

After reweighing the remaining aggravating circumstances and the mitigating evidence, we conclude that the sentencing panel would have found Redman death eligible absent the invalid aggravator. The remaining aggravators in this case are compelling. Redman mutilated the body with calculated brutality to avoid discovery of Biederman’s identity, thereby concealing Redman’s involvement in the murder. And although the under-sentence-of-imprisonment and the prior-violent-felony aggravators primarily arise from one incident—the West Virginia jail breaking and concomitant assault on a deputy sheriff—Redman’s actions suggest that he is a danger to others and has engaged in escalating violence. Although Redman’s evidence in mitigation was convincing, it is not compelling when weighed against the strength of the remaining aggravators. Therefore, we conclude that the sentencing panel would have found Redman death eligible absent the invalid aggravator. Further, considering all of the evidence adduced during the penalty hearing, we conclude that the sentencing panel would have imposed death. Consequently, although Redman demonstrated good cause for failing to raise his McConnell claim previously, he failed to establish actual prejudice.⁴

⁴Redman challenges the reweighing analysis on several grounds, including that it requires this court to consider “objective evidence of the ‘reasoned moral response’ juries and prosecutors have to egregious cases,” Nevada’s statutory scheme “precludes any state court from making a constitutionally adequate assessment of harmlessness and reweighing to uphold a death sentence,” and reweighing violates constitutional principles. However, our authority to reweigh is firmly established. See Clemons v. Mississippi, 494 U.S. 738, 741 (1990); State v. Bennett, 119 *continued on next page . . .*

Brady claim

Redman argues that the district court erred by denying his claim that the State failed to disclose certain evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963). In particular, he contends that the State withheld exculpatory information related to the “uncharged West Virginia offenses and incarceration” and Biederman’s criminal record and identity.

Brady obliges a prosecutor to reveal evidence favorable to the defense when that evidence is material to guilt or punishment or impeachment. Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000). There are three components to a successful Brady claim: “the evidence at issue is favorable to the accused; the evidence was withheld by the state,

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Nev. 589, 604, 81 P.3d 1, 11 (2003); Pertgen v. State, 110 Nev. 554, 563, 875 P.2d 361, 366 (1994), abrogated on other grounds by Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001). Relying on Bennett, Redman further argues that any reweighing analysis must include consideration of mitigation evidence not presented to the sentencing panel but developed during post-conviction proceedings. In Bennett, this court concluded that the defendant’s death sentence could not be upheld after striking an aggravator “[c]onsidering the remaining aggravators, the mitigating evidence that the jury heard, and the undisclosed mitigating evidence that the jury did not hear.” Bennett, 119 Nev. at 605, 81 P.3d at 11. However, Bennett was unique in that it involved mitigation evidence that was improperly withheld by the State rather than mitigation evidence counsel failed to develop and present during the penalty hearing. That case does not stand for a general proposition that reweighing analysis must include consideration of evidence not presented to the jury.

either intentionally or inadvertently; and prejudice ensued, i.e., the evidence was material.” Id. at 67, 993 P.2d at 37.

West Virginia offenses and incarceration

Redman argues that the State withheld evidence related to his altercation with another man in West Virginia in 1985. Redman does not identify, however, what exculpatory evidence regarding this incident the State purportedly withheld or any resulting prejudice. We therefore conclude that the district court did not err by denying this claim.

Biederman’s character and record

Redman argues that the State failed to disclose Biederman’s criminal record, which would have supported a theory of self-defense or at least would have “countered the State’s picture of the victim as an unsophisticated innocent.” We conclude that Redman cannot satisfy the prejudice prong of Brady because the evidence produced at trial dispels any claim of self-defense. Evidence of Biederman’s criminal record, even if presented to the jury, would not have supported a theory of self-defense or otherwise altered the jury’s determination of guilt.

Regarding Biederman’s identity, Redman contends that documents related to Biederman’s various arrests throughout his life have conflicting information as to his height, eye color, and place of birth. Redman argues that this conflicting information could have been used to “either present a case of self-defense or to delve further into the victim’s identity and background.” He failed to explain the relevance of this information to a self-defense theory. And Redman’s claim that this evidence would have led to helpful information regarding Biederman’s “identity and background” lacks coherence. Because Redman failed to

demonstrate prejudice, we conclude that the district court did not err by denying this claim.

Having considered Redman's arguments and concluded that the district court did not err by denying his post-conviction petition for a writ of habeas corpus, we

ORDER the judgment of the district court AFFIRMED.⁵

Hardesty, C.J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Eighth Judicial District Court Dept. 8, District Judge
Law Offices of A. Richard Ellis
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁵The Honorable Ron Parraguirre, Justice, did not participate in the decision in this matter.