

IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD MITCHELL LEAVITT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50438

FILED

APR 18 2008

TRAVIS K. LINDEMAN
CLERK OF SUPREME COURT
BY 
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. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On June 15, 1988, the district court convicted appellant, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life without the possibility of parole in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on October 24, 1989. Appellant unsuccessfully sought post-conviction relief by way of a previous post-conviction petition for a writ of habeas corpus.²

¹Leavitt v. State, Docket No. 19493 (Order Dismissing Appeal, September 28, 1989).

²Leavitt v. State, Docket No. 28987 (Order Dismissing Appeal, February 10, 1999).

On September 21, 2007, appellant filed the instant 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 January 3, 2008, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than seventeen years after this court issued a remittitur in his direct appeal case and approximately fifteen years after the effective date of NRS 34.726.³ Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had previously filed a petition for a writ of habeas corpus.⁵ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁶

In attempt to demonstrate cause for the delay, appellant contended that the aiding and abetting instructions given to the jury were faulty in light of this court's recent decision in Sharma v. State.⁷ Appellant contended that Sharma applied to him because this court held

³1991 Nev. Stat., ch. 44, § 5, at 75-76, ch. 44, § 33, at 92 (NRS 34.726).

⁴See NRS 34.726(1).

⁵See 1985 Nev. Stat., ch. 434, § 10, at 1232 (NRS 34.810(1)(b)(2) NRS 34.810(2)).

⁶See NRS 34.726(1); NRS 34.810(3).

⁷118 Nev. 648, 56 P.3d 868 (2002).

in 2006, in Mitchell v. State,⁸ that Sharma applied retroactively to cases that were final when Sharma was decided. Appellant appeared to argue that he could not have presented this issue before this court decided Sharma and Mitchell.

We conclude that appellant's reliance on Sharma is misplaced and that the district court did not err in denying his petition. In Mitchell, this court held that Sharma was a clarification of the law.⁹ As Sharma reflects a clarification of the law, the underlying reasoning in Sharma existed at the time of appellant's trial and presented a basis for which appellant could have presented a claim on direct appeal.¹⁰

As a separate and independent ground for denying relief, we conclude that appellant failed to establish prejudice. The State presented overwhelming evidence that appellant had the intent necessary to be held liable for the victim's murder under an aiding or abetting theory of liability. Overwhelming evidence supported a finding that appellant struck the victim with the hammer repeatedly causing substantial loss of blood and assisted his co-defendant in disposing of the body. Consequently, we conclude that appellant did not demonstrate a reasonable probability that the result of his trial would have been

⁸122 Nev. ___, 149 P.3d 33 (2006).

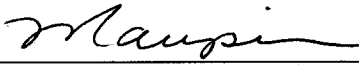
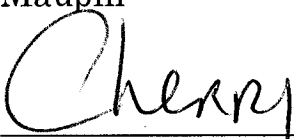

⁹122 Nev. ___, 149 P.3d 33 (2006).

¹⁰See Colwell v. State, 118 Nev. 807, 819, 59 P.3d 463, 472 (2002) (stating that if a decision merely construes and clarifies an existing rule rather than announce a new rule, this court's interpretation is merely a restatement of existing law).

different absent the allegedly faulty jury instruction. Therefore, we conclude that the district court did not err dismissing this claim.

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.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹²


_____, J.
Maupin

_____, J.
Cherry

_____, J.
Saitta

cc: Hon. Michelle Leavitt, District Judge
Todd Mitchell Leavitt
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹¹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹²We 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.