


IN THE SUPREME COURT OF THE STATE OF NEVADA

TYRONE LAFAYETTE GARNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51053

FILED

MAR 16 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a proper person post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Tyrone Garner claims that the district court erred by dismissing his petition as procedurally barred. Specifically, he claims that he demonstrated good cause to challenge his convictions and that he is innocent of the charged crimes because the State failed to prove that he had the requisite intent.¹ We conclude that the district court did not err.

Garner's petition was untimely and successive, and therefore it was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(1)(b), (3). Garner claimed that this court's decisions in Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002),


¹Garner also challenges a premeditation instruction that was given at his trial. Garner's claim was not presented in his petition below, and we therefore decline to consider it. See Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), overruled on other grounds by Means v. State, 120 Nev. 1001, 103 P.3d 25 (2004).

and Bolden v. State, 121 Nev. 908, 124 P.3d 191 (2005), overruled in part by Cortinas v. State, 124 Nev. ___, 195 P.3d 315 (2008), provided good cause to raise his claims in an untimely and successive petition. However, even assuming that those cases apply to Garner, he did not file his present petition until five years after our decision in Sharma and two years after Bolden was decided. He failed to explain the additional delay, and we conclude that his claims were not raised within a reasonable period of time. See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003).

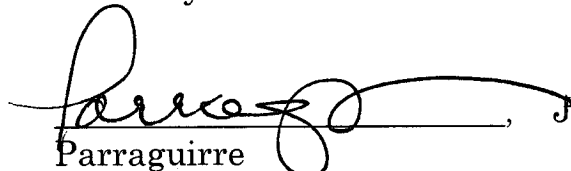
As for Garner's claim of innocence, it is unsupported by any new evidence. Therefore, it must fail. See Schlup v. Delo, 513 U.S. 298, 316 (1995) ("Without any new evidence of innocence, even the existence of a concededly meritorious constitutional violation is not in itself sufficient to establish a miscarriage of justice that would allow a habeas court to reach the merits of a barred claim.").

Having considered Garner's claims and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Law Offices of Martin Hart, LLC
Tyrone Lafayette Garner
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk