

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADRIAN MONTALVO MEDINA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51346

FILED

FEB 04 2010

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

ORDER OF AFFIRMANCE

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

Appellant filed his petition on July 23, 2007, more than seven years after this court issued the remittitur from his direct appeal on January 18, 2000.¹ Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.² See NRS 34.810(1)(b)(2); NRS 34.810(2). To the extent appellant raised claims that were new and different from those raised in his previous

¹See Medina v. State, Docket No. 32131 (Order Dismissing Appeal, December 20, 1999).

²See Medina v. State, Docket No. 38719 (Order of Affirmance, January 7, 2003).

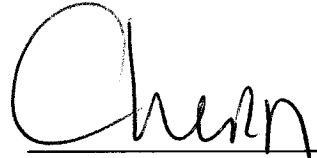
petitions, those claims were an abuse of the writ. See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

In an attempt to excuse his procedural defects, appellant argues that his claims were based on this court's decisions in Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002) and Bolden v. State, 121 Nev. 908, 124 P.3d 191 (2005), all of which were decided after this court issued the remittitur in his direct appeal. Appellant further argues that he did not have good cause to raise his claims pursuant to Bolden and Sharma until this court issued its decision in Mitchell v. State, 122 Nev. 1269, 149 P.3d 33 (2006) (concluding that Sharma applied retroactively). Appellant's reliance on Mitchell to establish good cause is misguided. Appellant could have filed his claims pursuant to Sharma and Bolden as soon as these cases were decided in 2002 and 2005, respectively. See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Thus, even if this court were to conclude that these decisions provided good cause for a part of appellant's delay in filing, appellant fails to demonstrate good cause for the entire length of his delay. See NRS 34.726(1).


In addition, we note that the instructions to the jury alleged that appellant "directly commit[ed]" the killing. Further, the jury found appellant guilty of conspiracy to commit murder, indicating that the jury found that appellant possessed the requisite intent to commit murder. Thus, Sharma and Bolden are inapplicable in this case, and appellant

cannot demonstrate he would be prejudiced by the denial of this petition as procedurally barred. Finally, appellant fails to overcome the presumption of prejudice to the State. Accordingly, we

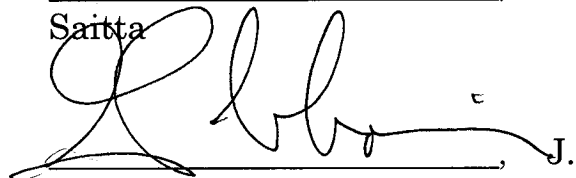
ORDER the judgment of the district court AFFIRMED.

 _____, J.

Cherry

 _____, J.

Saitta

 _____, J.

Gibbons

cc: Eighth Judicial District Court Dept. 15, District Judge
Kirk T. Kennedy
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk