

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIANO GARCIA-LOPEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52690

FILED

AUG 25 2009

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 Victoriano Garcia-Lopez's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On May 30, 1996, the district court convicted appellant, pursuant to a guilty plea, of murder with the use of a deadly weapon. The district court sentenced appellant to serve a term of life without the possibility of parole in the Nevada State Prison, plus an equal and consecutive term for the deadly weapon enhancement. Appellant did not file a direct appeal. Appellant unsuccessfully sought post-conviction relief by way of two post-conviction petitions for a writ of habeas corpus. Garcia-Lopez v. State, Docket No. 46816 (Order of Affirmance, June 30, 2006); Garcia-Lopez v. State, Docket No. 32717 (Order Dismissing Appeal, September 8, 2000).

On July 30, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State did not file an opposition to the petition. 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 October 17, 2008, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant claimed that (1) he was incompetent to enter a plea of guilty; (2) he was sentenced while incompetent; (3) he was coerced into involuntarily entering a guilty plea; (4) counsel had a conflict of interest; (5) counsel was ineffective for failing to withdraw due to a conflict of interest; (6) he received ineffective assistance of counsel at sentencing; and (7) counsel was ineffective for failing to seek a competency examination.

Appellant filed his petition more than twelve years after entry of the judgment of conviction. 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 alleging grounds (1), (2), (4), (5), (6), and (7). See NRS 34.810(2). To the extent appellant alleged new grounds for relief not raised in his previous petitions, his petition was an abuse of the writ. 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(3).

In an attempt to overcome his procedural defects, appellant alleged that he was actually innocent. A petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a

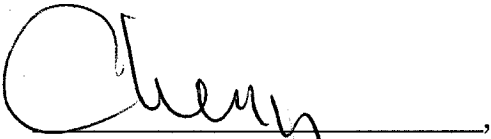
fundamental miscarriage of justice. Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). In order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence of the crime—"it is more likely than not that no reasonable juror would have convicted him absent a constitutional violation." Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). When the conviction is based upon a guilty plea, the petitioner must demonstrate that he is innocent of charges foregone in the plea bargaining process. Bousley v. United States, 523 U.S. 614, 623-24 (1998). Beyond his blanket allegation that he was innocent, appellant presented no facts to demonstrate his innocence. Accordingly, appellant did not demonstrate that the district court's failure to review his defaulted claims would result in a fundamental miscarriage of justice. Therefore, the district court did not err in dismissing appellant's petition as procedurally barred.

As a separate and independent ground for affirming the order of the district court, we note that this court has already concluded in a previous order that appellant was competent at the time he entered his guilty plea and at the time of sentencing; defense counsel did not have a conflict of interest; appellant was not prejudiced by any actions of counsel at sentencing, and counsel was not ineffective for failing to seek additional competency examinations. Garcia-Lopez v. State, Docket No. 32717 (Order Dismissing Appeal, September 8, 2000). The doctrine of law of the case prevents further litigation of these issues and "cannot be avoided by a more detailed and precisely focused argument." See Hall v State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Therefore, claims (1), (2), (4), (5), (6),

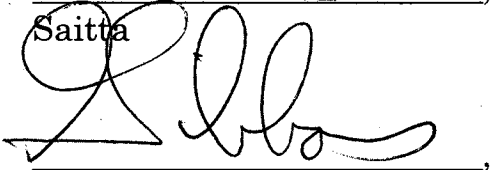
and (7) were properly dismissed pursuant to the doctrine of law of the case.

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

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Steven P. Elliott, District Judge
Victoriano Garcia-Lopez
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk