

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEANGELO LAMONT MITCHELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53085

**FILED**

**JAN 07 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; Kathy A. Hardcastle, Judge.

Appellant filed his petition on March 13, 2007, more than four years after this court issued the remittitur from his direct appeal on August 6, 2002. 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.<sup>1</sup> See NRS 34.810(1)(b). Further, appellant's petition constituted an abuse of the writ as his claims were new and different from those claims raised in his previous post-conviction petition. 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(3).

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<sup>1</sup>Mitchell v. State, Docket No. 42638 (Order of Affirmance, March 27, 2006).

On appeal, appellant argues that the district court erred in applying the procedural bars because there is a conflict between NRS 34.726 and NRS 34.810 in regards to a second petition and therefore his petition should be treated as timely filed because it was filed within one year from the issuance of the remittitur from the appeal as to his first post-conviction petition for a writ of habeas corpus; and his post-conviction counsel was ineffective for failing to raise claims involving the aiding and abetting jury instruction, Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002), and the coconspirator liability jury instruction, Bolden v. State, 121 Nev. 908, 124 P.3d 191 (2005), overruled on other grounds by Cortinas v. State, 124 Nev. \_\_\_, \_\_\_, 195 P.3d 315, 324 (2008).

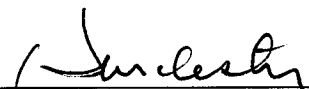
Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition as procedurally barred. First, there is no exception in NRS 34.726(1) for a second petition and no conflict with NRS 34.810(1). See Pellegrini v. State 117 Nev. 869, 869-78, 34 P.3d 519, 526-31 (2001). Second, as appellant had no statutory right to post-conviction counsel, claims of ineffective assistance of post-conviction counsel do not provide good cause to raise a claim in a successive and untimely petition. McKague v. Warden, 112 Nev. 159, 165 n.5, 912 P.2d 255, 258 n.5 (1996). The decisions in Sharma and Bolden also do not provide good cause. Sharma was decided before appellant's first petition, therefore claims based on Sharma were reasonably available to be raised in appellant's first petition. Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Bolden was decided on December 15, 2005, yet appellant waited more than two years to file the instant petition. Thus, even if Bolden provided good cause for part of appellant's delay in filing, appellant did not demonstrate good cause for the entire length of the delay. Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).


Even assuming that there was good cause to raise the Bolden claim, appellant fails to demonstrate actual prejudice. Appellant was subject to liability under the felony-murder rule. Walker v. State, 78 Nev. 463, 473, 376 P.2d 137, 142 (1962); State v. Contreras, 118 Nev. 332, 334, 46 P.3d 661, 662 (2002). Any alleged error relating to the general verdict was harmless as there was sufficient evidence to support a felony-murder theory for first-degree murder. Cortinas, 124 Nev. at \_\_\_, 195 P.3d at 323. Therefore, we conclude that the district court did not err in determining that this claim was procedurally barred and without good cause for the procedural defects.

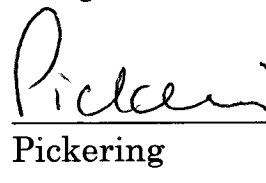
Appellant also argues that the district court erred by denying the petition without conducting an evidentiary hearing. As all of his claims are procedurally barred, appellant fails to demonstrate that an evidentiary hearing concerning these claims was necessary. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Having considered appellant's contentions and concluding that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Kathy A. Hardcastle, District Judge  
Law Offices of Cynthia Dustin, LLC  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk