

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROSS ERIC BARTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53122

FILED

FEB 04 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

Appellant filed his petition on June 7, 2007, more than ten years after this court issued the remittitur from his direct appeal on January 17, 1997.² Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed two post-conviction petitions for a writ of habeas corpus.³ See NRS 34.810(1)(b); NRS 34.810(2). Further, appellant's petition constituted an abuse of the writ as some claims were new and

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²Barton v. State, Docket No. 27076 (Order Dismissing Appeal, December 20, 1996).

³Barton v. State, 117 Nev. 686, 30 P.3d 1103 (2001); Barton v. State, Docket No. 47558 (Order of Affirmance, October 13, 2006).

different from those claims raised in his previous post-conviction petitions. 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).

To excuse the procedural defects, appellant claimed Rosas v. State, 122 Nev. 1258, 147 P.3d 1101 (2006), overruled the holding in his 2001 opinion and therefore he can file a successive petition to relitigate his claim that trial counsel was ineffective for failing to request a jury instruction on reckless driving as a lesser included offense. We conclude that appellant failed overcome the procedural bars.

Rosas did not overrule our prior holding that reckless driving did not meet the Blockburger v. United States, 284 U.S. 299 (1932), elements test to be a lesser included offense of murder. Barton v. State, 117 Nev. 686, 694, 30 P.3d 1103, 1108 (2001), overruled on other grounds by Rosas, 122 Nev. 1258, 147 P.3d 1101. Thus, our prior decision is the law of the case, and this claim cannot be relitigated. See Hall v State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). Appellant also failed to demonstrate prejudice sufficient to overcome the procedural bars as this court concluded on direct appeal that the State properly charged appellant with murder rather than reckless driving because there was substantial evidence of appellant's intent to kill the victim,. Barton v. State, Docket No. 27076 (Order Dismissing Appeal, December 20, 1996). Therefore, the district court did not err in determining that the petition was procedurally barred.

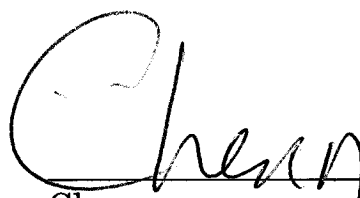
Appellant's claim that the parole board used incorrect information for his parole hearing was already considered and rejected in an earlier petition, Barton v. State, Docket No. 47558 (Order of Affirmance, October 13, 2006), and thus is barred by the doctrine of law of


the case which cannot be avoided by a more detailed and precisely focused argument. See Hall, 91 Nev. at 316, 535 P.2d at 799. Therefore, the district court did not err in determining that his petition was procedurally barred.


Appellant's claim concerning the confiscation of typewriters challenges the conditions of confinement and thus cannot be raised in a habeas petition. Bowen v. Warden, 100 Nev. 489, 686 P.2d 250 (1984). Therefore, the district court did not err in denying this claim.

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

ORDER the judgment of the district court AFFIRMED.⁴


Cherry, J.


Saitta, J.


Gibbons, J.

⁴We 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.

cc: Eighth Judicial District Court Dept. 8, District Judge
Ross Eric Barton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk