

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTIAN DORAN WALKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53195

FILED

MAY 13 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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On May 5, 2000, appellant Christian Doran Walker was convicted, pursuant to a jury verdict, of second-degree murder with the use of a deadly weapon and violation of a temporary protective order. Appellant was sentenced to serve a term of life in the Nevada State Prison with parole eligibility after ten years for the murder count and a concurrent term of one year for the count of violation of the TPO. Appellant appealed, and this court affirmed. Walker v. State, Docket No. 35996 (Order of Affirmance, October 8, 2001). The remittitur issued on November 5, 2001.

On October 15, 2002, appellant filed a proper person petition for a writ of habeas corpus. The State opposed the petition. Appellant then hired post-conviction counsel and filed a supplemental brief. On May 24, 2006, after conducting an evidentiary hearing, the district court entered an order denying the petition. On appeal, this court affirmed the

order of the district court. Walker v. State, Docket No. 47471 (Order of Affirmance, October 21, 2008).

On August 12, 2008, appellant filed a proper person petition for a writ of habeas corpus. The State opposed 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 February 25, 2009, the district court denied the petition. This appeal followed.

In his petition, appellant claimed: (1) the district court erred in giving a jury instruction that merged all of the elements of first-degree murder into a single element, (2) the district court erred by giving a jury instruction that defined "premeditation" and left undefined "willful and deliberate," (3) the district court erred by giving a jury instruction "aggregating the elements of willful, deliberate, premeditated, and malice aforethought that requires a different mens rea," (4) the district court erred by giving a jury instruction on aiding and abetting that minimized the necessary state of mind, (5) the district court erred by giving a jury instruction that violated his right to freedom of association, (6) the district court erred by giving a jury instruction that told the jury their verdict must be unanimous, and (7) that his trial and appellate counsel were ineffective.

Appellant filed his petition more than six years after this court issued the remittitur from his direct appeal. 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. 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). Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

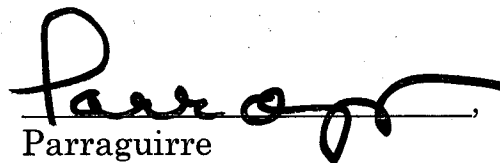
In an attempt to excuse his procedural defects, appellant claimed that the State did not prove every element of murder because the jury instruction on aiding and abetting violated the ruling in Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002), and, as the ruling in that case came out after the filing of his first petition, claims arising from that case were not available prior to the instant petition. Appellant did not attempt to excuse the procedural defects for his additional claims.

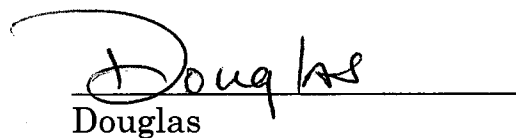
Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition as procedurally barred. Appellant failed to demonstrate that an impediment external to the defense excused the procedural defects. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994). Appellant's petition is subject to the procedural bars in NRS 34.726(1), NRS 34.810(1)(b), and NRS 34.810(2). Recently, in Mitchell v. State, this court held that Sharma was a clarification of the law and therefore applied to cases that were final before it was decided. 122 Nev. 1269, 1276, 149 P.3d 33, 38 (2006). Consequently, the legal grounds for appellant's claim were previously available and could have been raised in a previous petition. In addition, at trial, the State introduced evidence that appellant had threatened the victim, told others that he might "do something" to the victim to keep her from talking to the police about graffiti incidents appellant was involved with, owned a firearm of the same type that killed the victim, and was

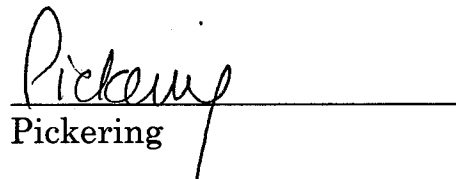
seen with the victim just prior to her murder. As such, the State produced evidenced that appellant possessed the requisite state of mind for murder, and as such, appellant failed to demonstrate that he was prejudiced by the aiding and abetting jury instruction and failed to demonstrate a fundamental miscarriage of justice to overcome the procedural bars. Id. at 1273-74, 149 P.3d at 35-6. Finally, appellant failed to overcome the presumption of prejudice to the State. Therefore, we affirm the order of the district court dismissing the petition as procedurally barred and barred by laches.

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.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Donald M. Mosley, District Judge
Christian Doran Walker
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk