

IN THE SUPREME COURT OF THE STATE OF NEVADA

ATIBA MALIK MOORE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51590

ATIBA MALIK MOORE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52286

ATIBA MALIK MOORE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53592

**FILED**

FEB 04 2010

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

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying appellant's post-conviction petitions for writs of habeas corpus, and motion to correct the amended judgment of conviction.<sup>1</sup>

<sup>1</sup>This 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).

Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. We elect to consolidate these appeals for disposition. NRAP 3(b).

Docket No. 51590

Docket No. 51590 is a proper person appeal from an order of the district court, following an evidentiary hearing, denying appellant's May 18, 2006, proper person post-conviction petition for a writ of habeas corpus.<sup>2</sup>

Appellant claimed that his trial counsel was ineffective for failing to obtain a continuance when witness Delana Butler failed to appear at the second day of trial and for instructing Butler to appear at the first day of trial.

Appellant failed to demonstrate that trial counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice such that counsel's errors were so severe that they rendered the jury's verdict unreliable. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). Trial counsel testified at the evidentiary hearing that Butler would have been unable to testify in the manner that appellant claimed. Appellant did not present any testimony or affidavit from Butler at the evidentiary hearing. In light of the evidence at trial and at the evidentiary hearing, appellant

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<sup>2</sup>The district court previously denied the majority of the claims in appellant's petition, and this court affirmed the decision of the district court with respect to those claims. See Moore v. State, Docket No. 48112 (Order Affirming in Part, Reversing in Part, and Remanding, November 20, 2007). However, this court remanded for an evidentiary hearing on one claim of ineffective assistance of counsel.

failed to demonstrate a reasonable probability of a different result had trial counsel obtained a continuance to allow Butler to testify. Therefore, the district court did not err in denying appellant's petition for a writ of habeas corpus. See Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (noting that a petitioner must demonstrate facts underlying a claim of ineffective assistance of counsel by a preponderance of the evidence); Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994) (noting that a district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal).

Docket No. 52286

Docket No. 52286 is a proper person appeal from an order of the district court denying appellant's motion to correct the amended judgment of conviction. This court concluded on direct appeal from the amended judgment of conviction that the district court did not err in imposing appellant's sentences for Count 1 and Count 3 consecutively. Moore v. State, Docket No. 47155 (Order of Affirmance, April 6, 2007). Accordingly, appellant's claim that the sentences for these counts should run concurrently is barred by the doctrine of law of the case, which "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). In addition, appellant's claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence or a motion to modify a sentence. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Appellant's sentence was facially legal, and appellant failed to demonstrate that the district court was not a court of competent jurisdiction. Id.; see also NRS 205.060; NRS 205.690; NRS 207.010(1)(a). Appellant also failed to identify any mistaken assumptions about his

criminal record which worked to his extreme detriment. Edwards, 112 Nev. at 708, 918 P.2d at 321. Therefore, the district court did not err in denying appellant's motion.<sup>3</sup>

Docket No. 53592

Docket No. 53592 is a proper person appeal from an order of the district court denying appellant's March 2, 2009, post-conviction petition for a writ of habeas corpus.

Appellant filed his petition nearly two years after this court issued the remittitur from his direct appeal from the amended judgment of conviction on May 4, 2007. Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.<sup>4</sup> 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 petition, 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).

Appellant made no attempt to excuse his procedural defects. In addition, this court concluded in appellant's direct appeal from his judgment of conviction and sentence that sufficient evidence existed to

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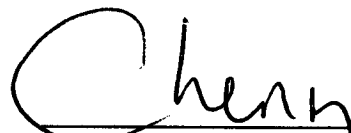
<sup>3</sup>To the extent appellant challenged the award of presentence credit for time served, this claim should have been raised on direct appeal from the amended judgment of conviction, or in a timely post-conviction petition for a writ of habeas corpus. See Griffin v. State, 122 Nev. 737, 744, 137 P.3d 1165, 1169-70 (2006).

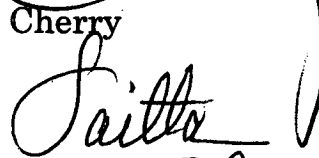
<sup>4</sup>See Moore v. State, Docket No. 48112 (Order Affirming in Part, Reversing in Part, and Remanding, November 20, 2007).


support appellant's burglary conviction. See Moore v. State, 122 Nev. 27, 36, 126 P.3d 508, 514 (2006). Thus, litigation of appellant's claim that the State failed to prove the specific intent necessary to support a burglary conviction 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, we conclude that the district court did not err in denying appellant's petition as procedurally barred and barred by the doctrine of law of the case.

Accordingly, for the reasons stated above, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Michelle Leavitt, District Judge  
Atiba Malik Moore  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk