

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY TYRELL NELSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53662

FILED

OCT 07 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; Kathy A. Hardcastle, Judge.

On November 4, 2005, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit robbery (felony), one count of robbery with the use of a deadly weapon (felony), and one count of failure to stop on signal of a police officer (felony). The district court adjudicated appellant a habitual criminal on the conspiracy and failure to stop counts and sentenced appellant to serve terms of 60 to 190 months in the Nevada State Prison. The district court further adjudicated appellant a habitual felon on the robbery count and sentenced appellant to a term of life with the possibility of parole. The district court imposed the terms to run concurrently with one another. This court affirmed the judgment of conviction and sentence on direct appeal. Nelson

v. State, 123 Nev. 534, 170 P.3d 517 (2007). The remittitur issued on March 21, 2008.

On January 22, 2009, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 April 9, 2009, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed: (1) his right to due process and protection against cruel and unusual punishment was violated when he was adjudicated a habitual criminal because the two prior convictions should only have counted as one prior conviction and because the State did not file a proper habitual criminal notice regarding the conspiracy and failure to stop counts; (2) the trial court erred in rejecting his proposed jury instructions; (3) various constitutional rights were violated when he was placed in physical restraints on the first day of trial; (4) the trial court erred in refusing to dismiss juror 7 when appellant's trial counsel noticed that juror 7 had allegedly seen appellant in shackles; and (5) the information failed to provide adequate notice of the endangerment element and the endangerment element was unconstitutionally vague.

Appellant acknowledged that claims 1, 2, 4, and 5 were similar to claims argued on direct appeal. Claims 1, 2, 4, and 5 were not merely similar, but nearly identical to the claims raised on direct appeal. Although appellant did not make an acknowledgement regarding claim 3, claim 3 was nearly identical to a claim raised on direct appeal relating to

the use of leg restraints at the beginning of trial. This court considered and rejected these claims on direct appeal. The doctrine of the law of the case prevents further litigation of these issues and cannot be avoided by a more detailed and precisely focused argument made upon reflection of the prior proceedings. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

Further, we note that to the extent that any of the claims were different from the claims litigated on direct appeal, the claims were waived pursuant to NRS 34.810(1)(b) and appellant failed to demonstrate good cause to excuse this procedural bar. NRS 34.810(1)(b) provides that the district court shall dismiss a habeas corpus petition if the conviction was the result of a trial and the grounds raised in the petition could have been raised on direct appeal unless the district court finds good cause and actual prejudice. The claims raised by appellant could have been raised on direct appeal.

Appellant argued that he had good cause because he needed to exhaust the claims for federal review and there was new case law supporting his petition. Raising claims in a procedurally defective petition for purposes of exhaustion does not amount to good cause as it is not an impediment external to the defense. Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003). Appellant failed to provide any specific argument regarding how new case law provided good cause in the instant case. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Therefore, we affirm the order of the district court denying the petition.

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.

Cherry, J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Anthony Tyrell Nelson
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk