

IN THE SUPREME COURT OF THE STATE OF NEVADA

PERCY LAVAE BACON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53804

PERCY LAVAE BACON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53915

**FILED**

OCT 21 2009

TRACIE J. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Docket No. 53804 is a proper person appeal from an order of the district court denying a petition for a writ of coram nobis. Docket No. 53915 is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. We elect to consolidate these appeals for disposition. NRAP 3(b). Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On January 19, 2006, the district court convicted appellant, pursuant to a jury verdict, of five counts of burglary, five counts of forgery, three counts of theft (Category B felony), and two counts of theft (Category C felony). The district court sentenced appellant to serve a total of five consecutive terms of 36 to 120 months in the Nevada State Prison. This court affirmed the judgment of conviction on direct appeal. Bacon v. State, Docket No. 46576 (Order of Affirmance, April 6, 2007). The remittitur

issued on May 3, 2007. Appellant unsuccessfully sought relief from his conviction by way of a timely post-conviction petition for a writ of habeas corpus. Bacon v. State, Docket No. 50612 (Order of Affirmance, May 15, 2008).

Docket No. 53804

On March 18, 2009, appellant filed a proper person petition for a writ of coram nobis in the district court. On September 10, 2009, the district court denied the petition. This appeal followed.

In his petition, appellant challenged the validity of the judgment of conviction.

NRS 34.724(1) provides that a challenge to the validity of the judgment of conviction may be made in a post-conviction petition for a writ of habeas corpus. NRS 34.724(2)(b) expressly provides that a post-conviction petition for a writ of habeas corpus "[c]omprehends and takes the place of all other common-law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them." Appellant improperly sought relief from his conviction in a petition for a writ of coram nobis. To the extent that the petition for a writ of coram nobis could be construed as a post-conviction petition for a writ of habeas corpus, the petition is procedurally barred and without a demonstration of good cause. NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(2). Therefore, we affirm the order of the district court denying the petition.

Docket No. 53915

On February 4, 2009, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a response. 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 May 28, 2009, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his due process rights were violated when he was made to appear before the grand jury in handcuffs, a belly chain, leg irons, and identifiable jailhouse clothing. Appellant claimed that a correctional officer was improperly present during the grand jury proceedings. Appellant further claimed that the State knew this prejudiced him before the grand jury, and thus, the State was required to present proof of bias.

Appellant filed his petition almost two 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 for a writ of habeas corpus and the claims raised therein were decided on the merits. See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was also an abuse of the writ because appellant's claim regarding bias was a new and different claim for relief. 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 did not attempt to excuse the untimely filing of his petition. Appellant claimed he had good cause to raise claims that had been previously decided because they were not adequately addressed by this court on direct appeal or in the prior post-conviction proceedings. Appellant claimed that error relating to his appearance in front of the grand jury amounted to structural error. Finally, he claimed that the State's failure to present this information to the district court

demonstrated good cause to excuse raising the claim in a successive petition.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant had failed to demonstrate good cause to excuse his procedural defects. As noted above, appellant did not attempt to demonstrate good cause for filing a late petition.<sup>1</sup> Appellant's claim relating to his appearance before the grand jury in restraints and jailhouse clothing was considered and rejected by this court on direct appeal. The doctrine of the law of the case prevents further litigation of this issue 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). Appellant failed to demonstrate good cause, an impediment external to the defense, excused his procedural defects. Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994). Appellant's claim relating to bias was reasonably available to be raised in the first timely habeas corpus petition, and thus, this claim did not provide good cause to excuse the procedural defects. Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003). Therefore, we affirm the order of the district court denying the petition.

#### Conclusion


Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that


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<sup>1</sup>In the form petition utilized by appellant, a petitioner sets forth good cause pursuant to question number 19. Appellant did not provide an answer to question number 19.

briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgments of the district court AFFIRMED.<sup>2</sup>

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

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

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

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

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<sup>2</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in these matters, 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.