

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL HAMPTON SONNER,
Appellant
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 53965

FILED

APR 19 2011

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus in a death penalty case. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

Appellant Michael Sonner shot and killed a Nevada Highway Patrol Trooper during a traffic stop after the Trooper received a report that Sonner had stolen \$22 worth of gasoline from a truck stop. Sonner was convicted of first-degree murder with the use of a deadly weapon and other attendant offenses and sentenced to death. This court affirmed the conviction and death sentence. Sonner v. State, 114 Nev. 321, 955 P.2d 673 (1998) (on rehearing).

Sonner filed a timely post-conviction petition on January 8, 1999, and a supplemental petition on June 30, 1999. Following an evidentiary hearing, the district court denied the petition. This court dismissed Sonner's appeal on June 9, 2000, and the remittitur issued on

July 6, 2000. Sonner v. Warden, Docket No. 35077 (Order Dismissing Appeal, June 9, 2000).

Sonner sought habeas relief in federal court in October 2000. Approximately six years later, on December 21, 2006, the federal district court stayed the proceedings to allow Sonner to return to state court to litigate four unexhausted claims.

On February 1, 2007, Sonner filed his second post-conviction petition in the district court, raising approximately 80 claims, including the four unexhausted claims. About three weeks later, on February 20, the district court determined that Sonner was restricted to raising only the four unexhausted claims and that his remaining claims were untimely, successive, or previously raised on direct appeal. Subsequently, Sonner filed an amended post-conviction petition raising four claims related to the constitutionality of Nevada's death penalty scheme (the unexhausted claims). The district court denied those four claims on the merits. This appeal followed.

Sonner argues that the district court erred by: (1) denying his challenges to Nevada's death penalty scheme as violative of the United States and Nevada Constitutions and (2) summarily dismissing his remaining substantive allegations without conducting an evidentiary hearing on his claims of good cause and prejudice.

Because Sonner filed his petition nine years after this court issued the remittitur from his direct appeal, the petition was untimely under NRS 34.726(1). The petition was also successive and therefore

procedurally barred pursuant to NRS 34.810(1)(b)(2). To overcome the procedural default, Sonner was obligated to allege and prove good cause for his delay and prejudice. See NRS 34.726(1); NRS 34.810(3); State v. Bennett, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003) (“To raise a claim in an untimely and/or successive post-conviction habeas petition, the petitioner has the burden of pleading and proving specific facts that demonstrate good cause and prejudice to overcome the procedural bars.”).

Claims related to challenges to Nevada’s death penalty scheme

As to Sonner’s first challenge, he argued in his amended petition that he had good cause to excuse his delay on several grounds, including: (1) ineffective assistance of appellate and post-conviction counsel, (2) the State failed to disclose material evidence and prevented counsel from having adequate time or resources to identify and present all available constitutional claims, (3) this court’s discretionary and inconsistent application of procedural bars excuses the default, (4) any delay is not his fault as contemplated by NRS 34.726, (5) NRS 34.726 was not intended to apply to successive petitions, (6) not considering his claims violates equal protection and Fourteenth Amendment due process, and (7) the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA) eliminated all statutory procedural defaults. The district court failed to consider applicable default rules but rather addressed the merits of Sonner’s four claims challenging Nevada’s death penalty scheme. Because application of procedural default rules is mandatory, State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005); State v.

Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003), the district court erred by not considering applicable default rules. Nevertheless, the district court reached the correct conclusion, albeit for the wrong reason, and we affirm the district court's judgment for the reasons below. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (stating that this court will affirm the judgment of a district court if it reached the correct result for the wrong reason).

We reject Sonner's good-cause arguments. He failed to adequately explain how his allegations of ineffective assistance of appellate and post-conviction counsel excuse the delay in raising his claims. Sonner failed to identify any material evidence the State withheld that caused the delay in raising his claims or explain how the State prevented counsel from having adequate time or resources to present available constitutional claims. And we have rejected claims that this court has inconsistently applied procedural default rules or that any prior inconsistencies would provide a basis to ignore the rules, see Riker, 121 Nev. at 236, 112 P.3d at 1077, and we are not persuaded that Sonner's delay in raising his claims is not his fault as contemplated by NRS 34.726, see Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (requiring that "a petitioner [to] show that an impediment external to the defense prevented him or her from complying with the state procedural default rules"). Further, we have rejected the argument that NRS 34.726 was not intended to apply to successive petitions. Pellegrini v. State, 117 Nev. 860, 869-70, 34 P.3d 519, 525, 526 (2001). As to his equal protection

and due process assertions, Sonner failed to show that he is a member of a protected class or impermissible discrimination, see Cairns v. Sheriff, 89 Nev. 113, 115, 508 P.2d 1015, 1017 (1973) (explaining requirements of equal protection claim), or adequately explain how not considering his procedurally defaulted claims violates due process under the Fourteenth Amendment. Finally, he failed to substantiate his claim that AEDPA, a federal act, operates to eliminate state procedural default rules. Because Sonner failed to demonstrate good cause for his delay of nine years in raising his constitutional challenges to the death penalty scheme, we conclude that those claims are procedurally barred.¹

¹Even if Sonner could demonstrate good cause on any of the grounds he asserts, he failed to demonstrate prejudice. Sonner challenges the constitutionality of the death penalty on a myriad of grounds, which he has clustered into four overarching categories: (1) the statutory death penalty scheme fails to “quantitatively and qualitatively narrow the class of first-degree murder defendants eligible for the death penalty in violation of the Nevada and United States Constitutions”; (2) because juries are not required to find unanimously that “individual aggravating circumstances exist or that [they] substantially outweigh, or outweigh, beyond a reasonable doubt, the mitigating circumstances,” Nevada’s capital sentencing statutes do not require juries to make the factual findings necessary to increase the statutory maximum punishment from life imprisonment to death; (3) the death penalty scheme operates arbitrarily and capriciously in violation of the Nevada and United States Constitutions, as evidenced by the disproportionate use of the death penalty compared to Nevada’s murder rate, the disproportionate imposition of the death penalty against minorities and the indigent, and a resulting error rate in capital cases of 68%; and (4) the lack of statewide
continued on next page . . .

As to Sonner's argument respecting his remaining claims raised in his February 1, 2007, post-conviction petition, the district court concluded that those claims were untimely, successive, or previously raised on direct appeal.² Although Sonner failed to allege good cause in that post-conviction petition, he asserted the same good-cause arguments outlined above in other pleadings in the district court. For the reasons explained above, we conclude that Sonner's good-cause arguments are insufficient to excuse the default and therefore those claims are procedurally barred under NRS 34.726 and NRS 34.810(1)(b).³ Accordingly, no relief is warranted.

Having considered Sonner's claims and concluded that no

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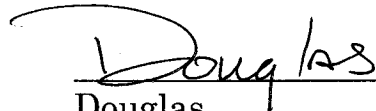
regulations for charging and prosecuting capital cases renders the death penalty scheme unconstitutional under the Nevada and United States Constitutions. Sonner also raised these claims in the context of ineffective assistance of trial, appellate, and post-conviction counsel. Having considered Sonner's arguments in those matters, we conclude that he failed to show prejudice sufficient to overcome the procedural default.

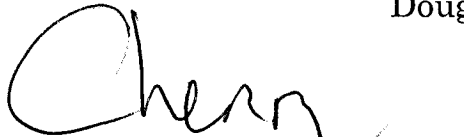
²To the extent that the district court summarily dismissed those claims on the ground that Sonner was limited solely to raising the four federally unexhausted claims, the district court erred.


³We further conclude that Sonner failed to demonstrate that his good-cause claims warranted an evidentiary hearing. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).


relief is warranted, we

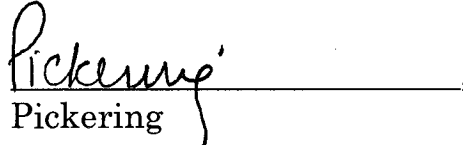
ORDER the judgment of the district court AFFIRMED.⁴

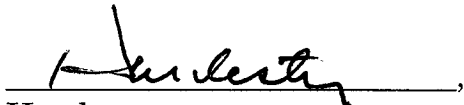

_____, C.J.
Douglas

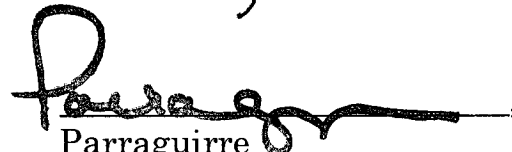

_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons


_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre

⁴Sonner argues that the district court's February 20, 2007, April 7, 2007, and May 13, 2009, orders are deficient because they failed to include findings of fact and conclusions of law as required by NRS 34.830(1) respecting his claims, excluding the four unexhausted claims. He urges this court to remand this matter with instructions to the district court to issue an order resolving his post-conviction petition that conforms to the law. We first note that Sonner has not included a district court order dated April 7, 2007; it appears that he may be referring to the district court's April 23, 2007, order regarding the format of Sonner's amended post-conviction petition. In any event, although the district court's orders related to the dismissal of his claims, other than the four unexhausted claims, do not strictly satisfy NRS 34.830, the record provides sufficient information from which this court may review Sonner's claims on appeal.

cc: Hon. Richard Wagner, District Judge
Glynn B. Cartledge
James Thomson
Attorney General/Carson City
Attorney General/Reno
Pershing County Clerk