

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTOINE LIDDELL WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54027

FILED

APR 08 2010

TRADIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion for a new trial in a death penalty case. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

In 1995, a jury found appellant Antoine Williams guilty of, among other crimes, two counts of first-degree murder, and he was subsequently sentenced to death. This court affirmed Williams' conviction and sentence. Williams v. State, 113 Nev. 1008, 945 P.2d 438 (1997), receded from in part by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000). Williams filed a post-conviction petition for a writ of habeas corpus, which the district court denied and which this court affirmed. Williams v. State, Docket No. 35559 (Order of Affirmance, October 9, 2000). On appeal from the denial of Williams' second post-conviction petition for a writ of habeas corpus, this court again affirmed his conviction but remanded for a new sentencing hearing. Williams v. State, Docket No. 45796 (Order of Affirming in Part, Reversing in Part, and Remanding, June 22, 2007). He then moved for a new trial in May 2009.

Williams claims that his motion for a new trial was timely. It was not. Williams moved for a new trial in the district court thirteen

years after his jury returned a verdict of guilty. See NRS 176.515. He asserts that he should be allowed to do so, in contravention of the statutory time limits for such motions, because his conviction is not yet final. Williams' conviction was final when certiorari was denied by the United States Supreme Court on October 5, 1998.¹ See Colwell v. State, 118 Nev. 807, 820, 59 P.3d 463, 472 (2002). The subsequent decision granting a new penalty hearing does not alter the finality of the conviction. See, e.g., Phillips v. Vasquez, 56 F.3d 1030, 1033 (9th Cir. 1995) (holding that under California's bifurcated death penalty process, a conviction for murder is final even when the death sentence has been reversed and is not yet final); People v. Kemp, 517 P.2d 826, 828 (Cal. 1974) (concluding retrial of penalty issue does not change fact that defendant's judgment became final when United States Supreme Court denied defendant's petition for writ of certiorari). We therefore conclude that the motion was untimely and the district court should have denied it on that basis.

Even if Williams' motion for a new trial had been timely, his substantive claim would also fail. Williams argues that the premeditation instruction commonly known as the Kazalyn instruction, Kazalyn v. State, 108 Nev. 67, 825 P.2d 578 (1992), receded from by Byford, 116 Nev. 215, 994 P.2d 700, was erroneous and prejudicial. Williams states that, because his conviction is not final, he is entitled to a new trial under Byford. Williams errs. This court concluded in Nika v. State, 124 Nev. ___, 198 P.3d 839 (2008), cert. denied, ___ U.S. ___, 130 S.Ct. 414 (2009),

¹Williams v. Nevada, 525 U.S. 830 (1998).

that Byford does not apply to cases that were final when it was decided. Id. at ___, 198 P.3d at 850-51. Byford was decided on February 28, 2000; Williams' conviction was final on October 5, 1998. Accordingly, neither our decision in Byford nor the Ninth Circuit's decision in Polk v. Sandoval, 503 F.3d 903 (9th Cir. 2007), provides Williams with grounds for relief.

Having considered appellant's claims and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Stefany Miley, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk