

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER N. WENTZELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54171

**FILED**

FEB 04 2010

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 granting in part and denying in part a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Sixth Judicial District Court, Humboldt County; Richard Wagner, Judge.

Appellant filed his petition on September 11, 2008, more than twelve years after the district court entered the judgment of conviction and sentence on April 29, 1996. 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

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<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).

habeas corpus.<sup>2</sup> See 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(3). Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

In an attempt to excuse his procedural defects, appellant first asserted that his claims were based on this court's decision in Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002), which was decided after the district court entered his judgment of conviction. Even if Sharma provided good cause for a part of appellant's delay in filing, appellant failed to demonstrate good cause for the entire length of his delay because he filed his petition more than six years after the Sharma decision. See Hathaway v. State, 119 Nev. 248, 252-3, 71 P.3d 503, 506 (2003). Further, because appellant was convicted pursuant to a guilty plea, Sharma is not applicable in this case, indicating that appellant failed to demonstrate prejudice from application of the procedural bar.

Next, appellant claimed that he was denied access to case files and other documents necessary to file his petition. Appellant also claimed that he was unable to file a timely petition because he was deprived of a direct appeal without his consent. Neither of these claims were sufficient

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<sup>2</sup>See Wentzell v. State, Docket No. 36739 (Order of Affirmance, February 14, 2002).

to establish good cause. See Hood v. State, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995) (holding that counsel's failure to send appellant files did not constitute good cause for appellant's procedural default); see also Hathaway, 119 Nev. at 254, 71 P.3d at 507 (concluding that "an appeal deprivation claim is not good cause if that claim was reasonably available to the petitioner during the statutory time period"); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994) (holding that good cause must be an impediment external to the defense).<sup>3</sup>


Finally, appellant claimed that he was actually innocent. Appellant's self-serving assertions regarding his state of mind, combined with a letter from a co-defendant stating that he was "more responsible" than appellant in planning the crime failed to establish that "it is more likely than not that no reasonable juror would have convicted [appellant]." See Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Thus, appellant failed to make any "colorable showing" of actual innocence. See Pellegrini,

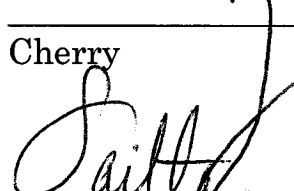
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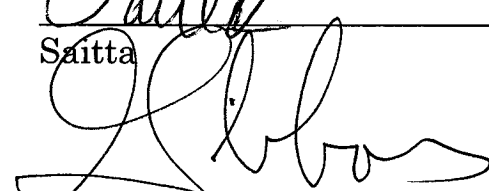
<sup>3</sup>As a separate and independent grounds for affirming the order of the district court, we note that this court has already concluded in a previous order that the failure of appellant's trial counsel to file a direct appeal and the failure of prison officials to provide appellant with his files did not establish good cause for appellant to file an untimely post-conviction petition. See Wentzell v. State, Docket No. 36739 (Order of Affirmance, February 14, 2002). The doctrine of law of the case prevents further litigation of these issues and "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).

117 Nev. at 887, 34 P.3d at 537. We further conclude that appellant failed to overcome the presumption of prejudice to the State pursuant to NRS 34.800(2). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

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

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

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

cc: Hon. Richard Wagner, District Judge  
Christopher N. Wentzell  
Attorney General/Carson City  
Humboldt County District Attorney  
Humboldt County Clerk

<sup>4</sup>We also conclude that the district court did not err in denying appellant's Motion to Disqualify Judge Wagner.

We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, 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.