

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN FLOWERS,  
Appellant,  
vs.  
WARDEN, NORTHERN NEVADA  
CORRECTIONAL CENTER, JIM  
BENEDETTI,  
Respondent.

No. 54916

**FILED**

JUN 09 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY A. Ingorsal  
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.<sup>1</sup> Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant filed his petition on July 24, 2009, more than six years after entry of the judgment of conviction on May 1, 2003.<sup>2</sup> Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was an abuse of the writ because he raised several new and different claims for relief from those litigated in two prior habeas

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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).

<sup>2</sup>No direct appeal was taken.

corpus petitions.<sup>3</sup> See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(3).

Appellant first argued that he had good cause because the State withheld surveillance videotapes, which would allegedly exonerate him. Appellant failed to demonstrate that videotapes exist, that any evidence was withheld, or that any allegedly withheld evidence was material, and thus, appellant failed to demonstrate good cause and prejudice to excuse the procedural defects. State v. Bennett, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003). Therefore, the district court did not err in denying this argument.

Next, appellant argued that he had good cause because recent DNA testing of the evidence exonerates him. Appellant failed to demonstrate newly discovered facts provided good cause because appellant failed to demonstrate that any recent testing has actually been conducted and failed to provide any actual results.<sup>4</sup> Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Therefore, the district court did not err in denying this argument.

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<sup>3</sup>Flowers v. State, Docket No. 50910 (Order of Affirmance, July 17 2008). No appeal was taken from the denial of his first petition filed on March 27, 2007.

<sup>4</sup>If appellant was seeking post-conviction testing of evidence, appellant was required to follow the procedures set forth in NRS 176.0918 as amended in 2009.

Next, appellant argued that he had good cause because his ex-wife had recanted her story that implicated appellant in the murder of the victim. Appellant failed to demonstrate newly discovered facts provided good cause because appellant failed to demonstrate that his ex-wife had actually recanted her story. Id.; Callier v. Warden, 111 Nev. 976, 988-89, 901 P.2d 619, 626-27 (1995). Therefore, the district court did not err in denying this argument.

Next, appellant argued that he had good cause because he had been forcibly medicated, was incompetent, and received poor assistance from inmate law clerks. Appellant failed to demonstrate that an impediment external to the defense excused his procedural defects because he failed to demonstrate that his mental health status prevented him from raising claims in a timely fashion. Hathaway, 119 Nev. at 252, 71 P.3d at 506. Further, poor assistance from inmate law clerks is not good cause. Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Notably, appellant was determined competent when he entered his guilty plea and appellant filed two prior post-conviction petitions and a number of proper person documents in the course of litigating his post-conviction petitions. Therefore, the district court did not err in denying this argument.

Finally, to the extent that appellant argued that a fundamental miscarriage of justice overcame the procedural bars, appellant failed to demonstrate actual innocence because appellant did not show that it is more likely than not that no reasonable juror would have convicted him in light of new evidence. Calderon v. Thompson, 523 U.S. 538, 559 (1998); 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).  
Therefore, the district court did not err in denying appellant's petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Hon. Michelle Leavitt, District Judge  
John Flowers  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>5</sup>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.