

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 55097

FILED

JUL 22 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK 0

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.¹ Eighth Judicial District Court, Clark County; James A. Brennan, Judge.

Appellant filed his petition on June 17, 2009,² more than two years after the remittitur issued on direct appeal on May 3, 2007. Bacon v. State, Docket No. 46576 (Order of Affirmance, April 6, 2007). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was further successive and an abuse of the writ.³ NRS

¹This 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).

²Appellant filed an amended petition on July 31, 2009.

³Appellant litigated a timely post-conviction petition for a writ of habeas corpus and two untimely post-conviction petitions. Bacon v. State,
continued on next page . . .

34.810(1)(b)(2); 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(1)(b); NRS 34.810(3).

Appellant first argued that he had good cause because appellate counsel failed to raise a number of claims on appeal. This argument lacked merit because a claim of ineffective assistance of counsel that is itself procedurally barred cannot be good cause to excuse a procedural defect. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); see also Edwards v. Carpenter, 529 U.S. 446, 453 (2000). Appellant failed to demonstrate good cause for his failure to raise his claim of ineffective assistance of appellate counsel.

Next, appellant argued that he had good cause because he only recently discovered that records from the justice court proceeding were not included in the record. This does not provide good cause as claims relating to the original justice court proceedings were reasonably available to be raised in a timely petition because appellant was aware of the justice court proceedings and made no demonstration that the documents would not have been previously available. Hathaway, 119 Nev. at 252, 71 P.3d at 506.

... continued

Docket No. 50612 (Order of Affirmance, May 15, 2008); Bacon v. State, Docket Nos. 53804, 53915 (Order of Affirmance, October 21, 2009).

Next, appellant argued that he had good cause due to an alleged jurisdictional defect. Appellant claimed that he was deprived of counsel at the grand jury proceedings and that this rendered the district court's jurisdiction over the indictment void and that he could raise such a claim in a late and successive petition. This argument would not provide good cause because claims relating to the grand jury proceedings were reasonably available to be raised in a timely petition and appellant failed to demonstrate good cause for his failure to do so. *Id.* Further, appellant's attempt to paint the error as jurisdictional was without merit as he failed to demonstrate that the district court was not a competent court of jurisdiction or that he was denied the right to counsel at a critical stage of the proceedings.⁴

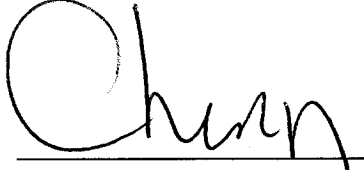
Finally, to the extent that appellant claimed that he was actually innocent, the claim of innocence lacked factual specificity and

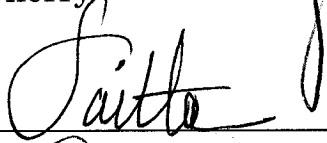
⁴We note that appellant waived his right to counsel for trial and sentencing. Appellant's own statements and the record indicate that appellant was represented by counsel in the original justice court proceedings, but that his counsel withdrew in the justice court. At the arraignment hearing, after the return of the indictment, appellant requested that he be allowed to represent himself, and the hearing was continued for a canvass pursuant to Faretta v. California, 422 U.S. 806 (1975).


Notably, appellant had no constitutional right to have counsel present during the grand jury proceedings. Sheriff v. Bright, 108 Nev. 498, 501, 835 P.3d 782, 784 (1992); see also Conn v. Gabbert, 526 U.S. 286, 292 (1999).

would not overcome application of the procedural bars in this case. 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); Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Therefore, we conclude that the district court did not err in determining that the petition was procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

⁵We 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.

cc: Chief Judge, Eighth Judicial District
Hon. James A. Brennan, Senior Judge
Percy Lavae Bacon
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk