

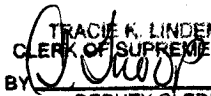
IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT WILLIAM ELLIOTT A/K/A
ROBERT WILLIAM ELLIOTT, JR.,
Appellant,
vs.
THE STATE OF NEVADA AND
WARDEN, E.K. MCDANIEL,
Respondents.

No. 56302

FILED

DEC 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

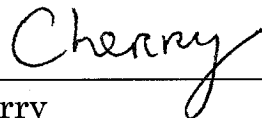
This is an appeal from a district court order denying appellant Robert William Elliott's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

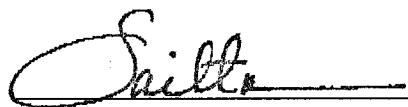
First, Elliott contends that the State violated Brady v. Maryland, 373 U.S. 83 (1963), during the post-conviction proceedings by not providing him with the location of the two potentially exculpatory witnesses named in his petition until the day of the evidentiary hearing. We disagree. Brady announced a trial right to discovery that does not apply in this post-conviction context. See District Attorney's Office for the Third Judicial Dist. v. Osborne, 557 U.S. ___, ___, 129 S. Ct. 2308, 2319-20 (2009). Further, the location of the witnesses was not exculpatory evidence. Therefore, we conclude that Elliott's contention is without merit.

Second, Elliott contends that the district court abused its discretion by denying his request for a continuance of the evidentiary hearing after the late disclosure pertaining to the two named witnesses in

his petition. In the proceedings below, however, Elliott sought a continuance in order to pursue a third potentially exculpatory witness not named in the petition. See Ford v. Warden, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995) (an appellant “cannot change [his] theory underlying an assignment of error on appeal”). The district court found that Elliott’s failure to name the witness in his petition violated the specific pleading requirements expressed in Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984), and that a continuance would not result in evidence supporting his underlying claim of ineffective assistance of counsel. We agree and conclude that the district court did not abuse its discretion by denying Elliott’s motion for a continuance. See Doleman v. State, 107 Nev. 409, 416, 812 P.2d 1287, 1291 (1991).

Having concluded that Elliott’s contentions lack merit, we
ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk