

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCOS CHALA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56603

FILED

JUL 15 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY Amersal
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Appellant filed his petition on May 18, 2010, nearly sixteen years after issuance of the remittitur on direct appeal on August 18, 1998. Chala v. State, Docket No. 26719 (Order Dismissing Appeal, July 28, 1998). 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 habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.² See NRS 34.810(1)(b)(2); 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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²Chala v. State, Docket No. 35631 (Order of Affirmance, July 6, 2001).


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).

In an attempt to overcome the procedural bars, appellant claimed this court's decisions in Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002), and Mitchell v. State, 122 Nev. 1269, 149 P.3d 33 (2006), provided good cause because the legal basis of his claim was not previously available. We disagree. Appellant's petition was filed eight years after Sharma was decided and four years after Mitchell was decided and appellant failed to demonstrate good cause for the delay. Appellant claimed that he had good cause for the entire length of the delay because he did not read, write, or speak English very well and he was without several of his legal papers because a prison law clerk took them with him when he moved prisons. These claims did not provide good cause because they were not an impediment external to the defense. Hathaway v. State, 119 Nev. 248, 252-54, 71 P.3d 503, 506-07 (2003). Further, appellant did not receive the improper instruction regarding aiding and abetting that was referred to in Sharma. Therefore, the district court did not err in denying this claim.

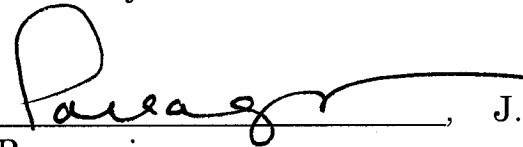
Appellant also claimed that he was actually innocent of attempted murder. He argued that a jury instruction regarding aiding and abetting included the improper "natural and probable consequences" language and violated Sharma, 118 Nev. at 655, 56 P.3d at 872, and that he did not have the required intent to commit the murder. He also claimed that the State failed to present sufficient evidence to convict him. Appellant failed to demonstrate that he was actually innocent. As stated above, appellant did not receive the improper instruction referred to in

Sharma. Further, appellant did not demonstrate actual innocence because he failed to show that “it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence.”³ Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)); see also 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). We therefore conclude that the district court did not err in denying appellant’s petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Kenneth C. Cory, District Judge
Marcos Chala
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We note that this court concluded on direct appeal that there was substantial evidence presented at trial to convict appellant on all charges. Chala v. State, Docket No. 26719 (Order Dismissing Appeal, July 28, 1998).