

IN THE SUPREME COURT OF THE STATE OF NEVADA

VINCENT E. TURNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56954

FILED

APR 06 2011

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 denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant filed his petition on July 2, 2009, almost nine years after issuance of the remittitur on direct appeal on September 19, 2000. Turner v. State, Docket No. 33967 (Order Dismissing Appeal, August 11, 2000). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously litigated a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ to the extent he raised several new and

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).

different claims from those raised in his previous petition.² See NRS 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, relying on this court's decisions in Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002), Bolden v. State, 121 Nev. 908, 124 P.3d 191 (2005), overruled on other grounds by Cortinas v. State, 124 Nev. 1013, 195 P.3d 315, cert. denied, ___ U.S. ___, 130 S. Ct. 416 (2009), and Mitchell v. State, 122 Nev. 1269, 149 P.3d 33 (2006), claimed that he had good cause because the legal basis of his claim was not available at the time of his conviction.³ Appellant previously raised this good cause argument on appeal in the first post-conviction proceedings.⁴ This court

²Turner v. State, Docket No. 45009 (Order of Affirmance, January 30, 2009).

³To the extent that appellant claimed that this court's decision in Daniels v. State, Docket No. 44071 (Order Affirming in Part, Reversing in Part, and Remanding, November 29, 2006), provided good cause, appellant's reliance on Daniels was mistaken as Daniels was an unpublished decision without precedential value. See SCR 123.

⁴While appellant's first proper person petition was filed before Sharma was decided, appellant's post-conviction counsel filed a supplement to the petition after the decision in Sharma, but did not raise a claim pursuant to Sharma. Appellant's post-conviction counsel, however, argued on appeal that Sharma, Bolden and Mitchell provided good cause to litigate a claim challenging the jury instructions for first-degree murder. This court determined that these cases did not provide good cause for appellant's failure to raise the claims on direct appeal or in the district court in the first instance.

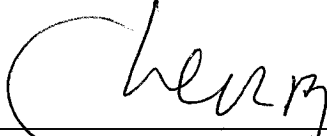
considered and rejected appellant's good cause argument in those proceedings. The doctrine of the law of the case prevents further litigation of this good cause argument. Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975). Further, appellant's petition was filed more than one year after each of the decisions he relies upon, and he offered no explanation for his delay. To the extent that he argued it was post-conviction counsel's failure to raise the claims earlier, an allegation of ineffective assistance of post-conviction counsel would not provide good cause in this case because the appointment of post-conviction counsel was not required. McKague v. Warden, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996). Therefore, the district court did not err in rejecting this good cause argument.

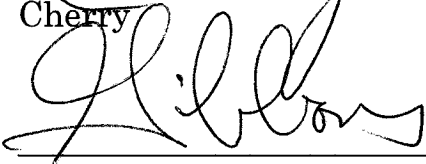
Next, appellant appeared to claim that plain error excused the procedural defects. Because an argument of plain error does not demonstrate an impediment external to the defense to excuse the procedural defects, the district court correctly rejected this good cause argument. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

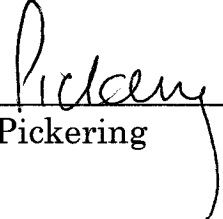
Finally, appellant claimed that he was actually innocent of first-degree murder because he did not specifically intend or know that his co-conspirators would murder the victim during the course of the robbery. Appellant did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." 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 as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Elissa F. Cadish, District Judge
Vincent E. Turner
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk