

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFERY JOHNSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58076

**FILED**

**OCT 05 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.<sup>1</sup> Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

In his petition, filed on June 15, 2010, appellant claimed that the State lost, destroyed, or failed to preserve important exculpatory evidence. Appellant's claim could have been raised in his direct appeal.<sup>2</sup> NRS 34.810(1)(b)(2). Appellant's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. NRS 34.810(1)(b).

Appellant did not argue that he had good cause. Moreover, he would not have been able to demonstrate actual prejudice. Appellant's sole claim was that the State failed to collect surveillance video covering


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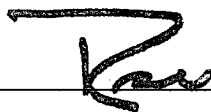
<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>2</sup>Johnson v. State, Docket No. 51903 (Order of Affirmance, May 21, 2009).

the area of the crime scene and that the video would have supported his testimony that he did not have a deadly weapon during the robbery. However, on direct appeal, this court held that appellant had not suffered undue prejudice from the State's failure to collect the video because the victim testified only that appellant had shown her a weapon he had inside a dark pouch and it was doubtful that the video would have shown whether the pouch contained a weapon. Johnson v. State, Docket No. 51903 (Order of Affirmance, May 21, 2009). The holding on direct appeal is the law of the case on all subsequent appeals. Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975). We therefore conclude that the district court did not err in denying the petition.<sup>3</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, Sr. J.  
Rose

  
\_\_\_\_\_, Sr. J.  
Shearing

<sup>3</sup>Although application of the statutory default rules is mandatory, State v Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005), the district court denied the petition as barred by the doctrine of the law of the case. We nevertheless affirm the district court's decision for the reasons stated above. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

<sup>4</sup>The Honorables Robert Rose and Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.

cc: Hon. Kathy A. Hardcastle, District Judge  
Jeffery Johnson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk