

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON DEMARLO MONGHUR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58413

**FILED**

**MAY 10 2012**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Brandon Monghur's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jerome T. Tao, Judge.

Monghur argues that the district court erred in denying his claim that the State withheld impeachment evidence in violation of Brady v. Maryland, 373 U.S. 83, 87 (1963). The district court found that the Brady claim was procedurally barred because it could have been raised on direct appeal and Monghur did not demonstrate good cause to excuse the procedural bar. See NRS 34.810(1)(b). We conclude that the district court did not err in denying Monghur's Brady claim. In his petition, Monghur alleged that the State did not disclose to the defense that two State witnesses had felony convictions, which prevented him from impeaching those witnesses with their criminal history during trial. Yet Monghur also alleged that he had informed his counsel during trial that those witnesses had criminal convictions. Thus, his own statements in his petition support the district court's determination that he knew of the factual basis of his claim before his direct appeal and could have raised it at that time. Although he argues that he did not actually obtain evidence of the

witnesses' criminal history until after his direct appeal, he failed to show that the evidence could not have been obtained through reasonable diligence earlier. Therefore, he did not demonstrate good cause for his failure to present this claim on direct appeal.<sup>1</sup> See Evans v. State, 117 Nev. 609, 646-47, 28 P.3d 498, 523 (2001) (post-conviction habeas claims that could have been raised on direct appeal are waived absent a showing of good cause and actual prejudice); see also NRS 34.810(1)(b).

Monghur also argues that the district court erred by failing to conduct an evidentiary hearing regarding the factual allegations raised in his petition. However, because the factual allegations in his petition demonstrated that his Brady claim could have been raised earlier and was procedurally barred, the district court was not required to hold an evidentiary hearing on this claim. See Nika v. State, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008) (“[A]n evidentiary hearing is mandated only when a post-conviction petitioner asserts specific factual allegations that are not belied or repelled by the record and that, if true, would entitle him to relief.”). To the extent that Monghur argues that an evidentiary hearing was necessary to resolve his ineffective-assistance claim, he has failed to offer any argument on appeal as to how he was prejudiced by his trial counsel’s failure to cross-examine the State witnesses about their criminal history. Further, Monghur has failed to provide adequate trial

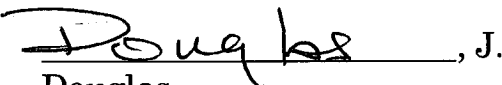
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<sup>1</sup>Monghur relies on Mazzan v. Warden, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000), in arguing that he demonstrated good cause for failing to raise his claim earlier since he showed that the State withheld evidence. However, Mazzan is inapposite to Monghur’s case because the petitioner in Mazzan, unlike Monghur, was unable to discover the withheld evidence until years after his direct appeal. Id. at 55-56, 993 P.2d at 29-30.

transcripts for this court's review, and the documents before this court are insufficient to demonstrate that the district court erred in denying his ineffective-assistance claim without first holding an evidentiary hearing. See Thomas v. State, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004) (an appellant is ultimately responsible for providing this court with portions of the record necessary to resolve his claims on appeal).

Having considered Monghur's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Jerome T. Tao, District Judge  
Craig W. Drummond  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk