

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL SAUCEDO LOPEZ,

No. 35492

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

MAR 05 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. B. [Signature]*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

Appellant was convicted in 1985, pursuant to a jury verdict, of first degree murder and sentenced to death. On appeal, this court affirmed his conviction and sentence.<sup>1</sup> Lopez filed a timely post-conviction petition pursuant to former NRS 177.315-.385. The district court entered an order denying the petition, and this court dismissed his appeal from that order in 1994.<sup>2</sup> Four years later, on March 18, 1998, appellant, through his present counsel, filed the underlying petition for a writ of habeas corpus. Pursuant to NRS 34.770, the district court declined to hold an evidentiary hearing and denied the petition on December 6, 1999, concluding that all of appellant's claims were procedurally barred. This appeal followed.

Appellant filed his petition nine years after this court affirmed his conviction and sentence on direct appeal and four years after this court dismissed his appeal from the order denying his first post-conviction petition. Thus, appellant's

<sup>1</sup>See Lopez v. State, 105 Nev. 68, 769 P.2d 1276 (1989).

<sup>2</sup>Lopez v. State, Docket No. 23628 (Order Dismissing Appeal, July 7, 1994).

petition was untimely filed.<sup>3</sup> Moreover, appellant's petition was successive because he had previously filed a post-conviction petition under the former statutes.<sup>4</sup> Appellant's petition was therefore procedurally barred absent a demonstration of good cause and prejudice.<sup>5</sup>

Appellant first proposes that this court should revisit two claims already resolved by this court in his previous appeals. Relying on Lozada v. State,<sup>6</sup> he claims the doctrine of the law of the case should not bar reconsideration of those claims because the prior resolutions were wrong. Appellant has failed to demonstrate that this court's prior resolution of any claims was erroneous. Further, we also reject appellant's argument based on People v. Ramos,<sup>7</sup> that this court's subsequent "clarification" of law warrants reconsideration. Appellant failed to provide sufficient factual allegations regarding either the resubmission of the case to the jury or counsel's decision not to call witnesses in mitigation at the penalty phase.<sup>8</sup> He has not demonstrated that he would be entitled to relief.<sup>9</sup>

Second, in an attempt to avoid the procedural defaults of NRS chapter 34, appellant argues that the procedural bars should not apply to his petition. Specifically, appellant contends that the one-year time bar provided in NRS 34.726 should not apply to successive

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<sup>3</sup>See NRS 34.726(1).

<sup>4</sup>See NRS 34.810(1)(b)(2); NRS 34.810(2).

<sup>5</sup>See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

<sup>6</sup>110 Nev. 349, 871 P.2d 944 (1994).

<sup>7</sup>938 P.2d 950 (Cal. 1997)

<sup>8</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>9</sup>See id.

petitions. However, in appellant's case, even if NRS 34.726 did not operate to bar the instant petition, NRS 34.810 does bar it. All of appellant's claims were either raised and resolved on direct appeal or in the prior post-conviction petition, or they are new claims that have not been raised before in any prior challenge. Appellant failed to offer any good cause for raising the same claims that he had raised before or for failing to raise the new claims in his prior appeal and petition. Consequently, even if we were to hold that NRS 34.726 does not apply, the claims are subject to the procedural bars of NRS 34.810.

Appellant also argues that the procedural bars of NRS 34.810 should not apply to bar his petition because this court has applied those bars inconsistently.<sup>10</sup> We have reviewed the copies of this court's orders appended to appellant's brief on appeal, and we reject the contention that they indicate an inconsistent application of the statutory provisions of NRS chapter 34. Further, we also reject the general contention that this court fails to apply the procedural bars consistently.<sup>11</sup> Accordingly, we conclude that the district court did not err in applying NRS 34.810 to appellant's petition. Finally, appellant fails to demonstrate that

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<sup>10</sup>See, e.g., *Wells v. Maass*, 28 F.3d 1005, 1010 (9th Cir. 1994) (holding that to serve as an adequate state ground for decision on federal habeas review, a state's procedural rules must be applied consistently).

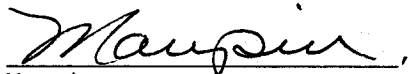
<sup>11</sup>See, e.g., *Valerio v. State*, 112 Nev. 383, 389-90, 915 P.2d 874, 878 (1996) (rejecting the same argument appellant now makes); see also *Moran v. McDaniel*, 80 F.3d 1261, 1269 (9th Cir. 1996) (holding that this court has consistently applied the state rule which prohibits review of the merits of an untimely claim unless the petitioner demonstrates cause).

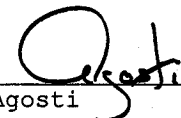
application of the procedural bars in this case would constitute a fundamental miscarriage of justice.<sup>12</sup>


Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition on procedural grounds.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Maupin, C.J.

  
Agosti, J.

  
Rose, J.

cc: Hon. John S. McGroarty, District Judge  
Attorney General  
Clark County District Attorney  
Beckley Singleton Jemison Cobeaga & List  
Clark County Clerk

<sup>12</sup>See *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); *Murray v. Carrier*, 477 U.S. 478, 496 (1986).