

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAYMOND GENE PHENIX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70554

FILED

DEC 14 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Raymond Gene Phenix appeals from an order of the district court denying a postconviction petition requesting a genetic marker analysis.¹ Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Phenix argues the district court erred in denying his request to conduct DNA testing on blood and a cigarette discovered at the crime scene. We conclude that the district court did not err in denying the petition because Phenix failed to demonstrate a reasonable possibility existed that he would not have been prosecuted or convicted if a genetic marker analysis was conducted. See NRS 176.09183(1)(a), (5)(b). A review of the record reveals there was significant evidence of Phenix's guilt. The record reveals Phenix telephoned the victim, Phenix's wife, multiple times at her work on the night of the murder in an effort to

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

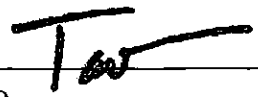
ascertain when she would leave work, to arrange a meeting with her, and because he had a "big surprise" for her. One of the victim's coworkers viewed Phenix at the victim's car shortly after the victim left work. The victim was later discovered in her car, killed by multiple stab wounds. Authorities later learned Phenix had increased the life insurance he would recover if the victim perished and that Phenix believed the victim had engaged in an affair with another man. Following the murder, Phenix offered to pay two witnesses if they would help him create an alibi. Phenix also sought out advice on how to ensure two witnesses were not available to testify at trial. Under these circumstances, Phenix did not demonstrate he would not have been prosecuted or convicted if genetic marker analysis had been conducted. Therefore, the district court properly denied Phenix's petition.

Phenix also argues the State improperly sought the death penalty, the trial court erred by failing to dismiss the charges against him when the State lost evidence, there was insufficient evidence to prove he was guilty, the district court erred in declining to conduct evidentiary hearings regarding his prior postconviction challenges, the State concealed evidence demonstrating another man pawned the victim's ring, and the Nevada Supreme Court violated his civil rights during the proceedings concerning his direct appeal. These issues were not raised in Phenix's petition before the district court and we decline to consider them in the first instance. *See generally Davis v. State*, 107 Nev. 600, 606, 817 P.2d

1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Raymond Gene Phenix
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We have reviewed all documents Phenix has submitted in this matter; and we conclude no relief based upon those submissions is warranted. To the extent Phenix has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.