


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICHOLAS JAMES WILLING,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74033

FILED

SEP 21 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Nicholas James Willing appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on October 27, 2016. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Willing filed his petition more than two years after issuance of the remittitur on direct appeal on June 11, 2013. *See Willing v. State*, Docket No. 61421 (Order of Affirmance, May 14, 2013). Thus, Willing's petition was untimely filed. *See* NRS 34.726(1). Willing's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

Willing claims the district court erred by denying his petition as procedurally barred because he demonstrated cause and prejudice to overcome the procedural bars. Specifically, he claimed he had good cause to overcome the procedural bar because the State withheld the fact it promised two witnesses, Sexton and Spellman, a reduction in charges and sentence if they testified against Willing at trial. Willing claimed he could not have raised this claim earlier because he only recently received a declaration from Sexton's counsel stating, "it was well understood by all


involved that she [Sexton] would only get the benefit of the deal if she testified against Nicholas Willing.” The district court dismissed the petition because Willing failed to demonstrate cause and prejudice to overcome the procedural bar because this claim was available to be raised in a timely petition and was previously raised in a motion for new trial.


We conclude substantial evidence supports the decision of the district court. The claim raised in Willing’s instant petition regarding Sexton is substantially similar to the claim raised in his motion for new trial. Willing specifically alleged in his motion for new trial that “Sexton was promised by the [State] that she would not be going to prison in exchange for her co-operation [sic] as a testifying co-defendant against Willing.” Further, Sexton’s counsel stated in a previous affidavit provided at the time of the motion for new trial that Sexton was promised a deal in exchange for testifying against Willing. The Nevada Supreme Court already affirmed the denial of this claim as raised in the motion for new trial. *See Willing v. State*, Docket No. 63197 (Order of Affirmance, April 10, 2014). Therefore, this claim was barred by the doctrine of law of the case, which cannot be avoided by a more detailed and focused argument. *See Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

The claim regarding Spellman supposedly receiving a deal from the State for testifying against Willing could have been raised in a timely filed petition. *See Hathaway v. State*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003). Further, Willing failed to support this claim with specific facts that, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Other than pointing out the sentence Spellman received and imputing Sexton’s counsel’s declaration to Spellman, Willing failed to support his claim with specific facts relating to Spellman.

Therefore, we conclude the district court did not err by dismissing the petition as procedurally time barred, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

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

cc: Hon. Robert W. Lane, District Judge  
Federal Public Defender/Las Vegas  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk