

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

No. 37309

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK, AND THE  
HONORABLE LEE A. GATES, DISTRICT  
JUDGE,

**FILED**

MAR 07 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

Respondents,

JOHN OLIVER SNOW,

Real Party in Interest.

ORDER GRANTING PETITION

This is an original petition for a writ of prohibition or mandamus. It challenges a district court order denying the State's motion to dismiss a successive petition for post-conviction habeas relief. The State contends that the district court erred in refusing to apply procedural bars to the petition, filed by John Oliver Snow, the real party in interest. Pursuant to this court's order, Snow filed an answer to the State's petition.

Snow was convicted of murder and sentenced to death in 1984. This court affirmed his conviction and sentence. Snow v. State, 101 Nev. 439, 705 P.2d 632 (1985). In August 1997 he filed the petition at issue, his third post-conviction habeas petition in state court. The State moved to dismiss, pleading laches and arguing that the petition was untimely, that Snow failed to raise some claims in prior proceedings, and that other claims were precluded by the law of the case. The district court denied the motion and ordered an evidentiary hearing. Its order stated in pertinent part:

Because the interest[s] of justice require more scrutiny in cases involving the death penalty, and because the Federal District Court allowed Petitioner to go back to the State Court to exhaust all issues he had not previously raised . . . , this court feels it must hold a hearing on the merits o[f] these new issues and not apply any of the procedural bars the District Attorney has argued should apply . . . .

We conclude that the district court disregarded a mandatory duty imposed by law in refusing to consider whether Snow's claims were procedurally barred. Snow filed this petition more than eleven years after this court affirmed his conviction. Thus, absent good cause for the delay, the petition was untimely under NRS 34.726(1). To establish good cause, Snow had to demonstrate that the delay was not his fault and dismissal would unduly prejudice him.<sup>1</sup> Similarly, dismissal of the petition was mandated under NRS 34.810 unless Snow could demonstrate good cause for failing to present the claims earlier, or presenting them again, and actual prejudice. Furthermore, NRS 34.800(2) provides that a delay of more than five years between a decision on direct appeal and the filing of a petition creates a rebuttable presumption of prejudice to the State, permitting dismissal of the petition. Finally, any claims decided in Snow's earlier appeals have become the law of the case and cannot be reconsidered.<sup>2</sup>

Nevertheless, the district court apparently felt constrained to reach the merits of some of Snow's claims because the case involves the death penalty and the federal court allowed Snow to return to state court with unexhausted claims. Neither of these factors permits the district court

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

<sup>2</sup>See *Pertgen v. State*, 110 Nev. 554, 557-58, 875 P.2d 361, 363 (1994).

to disregard the applicability of the procedural bars discussed above.

The statutory scheme set forth in NRS 34.726, 34.800, and 34.810 requires the district court to determine whether or not Snow's claims are procedurally barred. Also, the doctrine of the law of the case does not permit the court to disregard the law pronounced in any of Snow's earlier appeals as long as the facts are substantially the same.<sup>3</sup>

The district court's refusal to consider the applicability of these rules defeats their evident purposes: to maintain consistency and finality in judicial decisions and to promote judicial economy. Furthermore, if state courts do not consistently apply their procedural-bar rules, federal courts may disregard the rules in federal habeas proceedings and review claims despite procedural default.<sup>4</sup>

This court may issue a writ of mandamus to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion.<sup>5</sup> The writ does not issue where the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.<sup>6</sup> This court considers whether judicial economy and sound judicial administration militate for or against the granting of extraordinary relief such as mandamus.<sup>7</sup>

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<sup>3</sup>See Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

<sup>4</sup>See Loveland v. Hatcher, 231 F.3d 640, 642 (9th Cir. 2000).

<sup>5</sup>See NRS 34.160; Hickey v. District Court, 105 Nev. 729, 731, 782 P.2d 1336, 1337 (1989); see also Nev. Const. art. 6, § 4.


<sup>6</sup>See NRS 34.170; Hickey, 105 Nev. at 731, 782 P.2d at 1338.

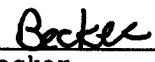
<sup>7</sup>See State v. Babayan, 106 Nev. 155, 175-76, 787 P.2d 805, 819 (1990).

We conclude that mandamus relief is appropriate here because determining whether procedural bars apply to an untimely or successive habeas petition is an act which the law requires of the district court and the refusal to do so constitutes an arbitrary and unreasonable exercise of discretion. Judicial economy and sound judicial administration militate for granting relief: unless Snow can show good cause for raising new claims, or reraising old ones, and actual prejudice, a post-conviction evidentiary hearing addressing the merits of Snow's claims will waste extensive time and resources of both the district court and the State. Also, the State has no plain, speedy, and adequate remedy in the ordinary course of law to avoid this waste if it occurs.

Therefore, we ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to comply with the pertinent law and decide the applicability of the procedural bars asserted by the State before determining whether to address the merits of any of Snow's substantive claims.<sup>8</sup>

  
\_\_\_\_\_, J.  
Young

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

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Lee A. Gates, District Judge  
Attorney General  
Clark County District Attorney  
Marc P. Picker  
Beesley & Peck, Ltd.  
Scott W. Edwards  
Clark County Clerk

<sup>8</sup>We hereby vacate the stay previously imposed in our order of February 6, 2001.