IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN JOSEPH SEKA,
Appellant,
vs.
WARDEN CALVIN JOHNSON; AND THE STATE OF NEVADA,
Respondents.

No. 86694

FILED

OCT 17 2024

ORDER OF AFFIRMANCE

This is an appeal from an order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

In 2001, a jury convicted appellant John Seka of two counts of murder and two counts of robbery. This court affirmed the judgment of conviction. *Seka v. State (Seka I)*, No. 37907 (Nev. Apr. 8, 2003) (Order of Affirmance). Seka filed a timely postconviction petition for a writ of habeas corpus, which the district court denied. This court affirmed that decision. *Seka v. State (Seka II)*, No. 44690 (Nev. June 8, 2005) (Order of Affirmance). In 2019, Seka moved for a new trial based on newly discovered DNA evidence. The district court granted the motion, but this court reversed that decision. *State v. Seka (Seka III)*, 137 Nev. 305, 318, 490 P.3d 1272, 1282 (2021). On November 1, 2022, Seka filed a second postconviction habeas petition raising collateral challenges to the convictions. The district court determined that Seka established good cause to overcome the procedural bars, *see* NRS 34.726(1) (providing the one-year time bar); NRS 34.810(3) (barring successive postconviction habeas petitions), but concluded that Seka had not demonstrated prejudice and denied the petition without

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conducting an evidentiary hearing. Seka appeals, challenging the district court's decision as to claims 1 and 2 of the petition.

In claim 1 of his petition, Seka alleged that the State withheld evidence—a latent fingerprint report—in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). A *Brady* violation has three components: that "(1) the evidence is favorable to the accused, either because it is exculpatory or impeaching; (2) the State withheld the evidence, either intentionally or inadvertently; and (3) prejudice ensued, i.e., the evidence was material." *State v. Huebler*, 128 Nev. 192, 198, 275 P.3d 91, 95 (2012) (internal quotation marks omitted). The district court determined that the State withheld the report, which parallels the cause showing to excuse the applicable procedural bars. *See id.* (observing the second and third *Brady* components parallel the cause and prejudice showings required to excuse the procedural time bar). But we agree with the district court's conclusion that the report was not material and thus no prejudice ensued.

"[E]vidence is material if there is a reasonable probability that the result would have been different if the evidence had been disclosed." *Jimenez v. State*, 112 Nev. 610, 619, 918 P.2d 687, 692 (1996); *see also Huebler*, 128 Nev. at 202, 275 P.3d at 95, 98 ("Normally, evidence is material if it creates a reasonable doubt." (internal quotation marks omitted)). The report at issue excluded Seka as the source of fingerprints on a purloined purse that law enforcement found hidden in the ceiling of the building where Seka lived and worked, which was located next door to the vacant business where one victim was killed. Law enforcement also located different caliber bullet casings, including calibers consistent with the weapons used in the murders, in the same building as the purse. According to Seka, the report "exonerates [him] of stealing the purse" and proves

others had access to the area where law enforcement discovered the purse, thus undermining the State's entire case. The report is material only if there is a reasonable probability that, had the evidence been available to the defense, the result of Seka's trial would have been different. *See Jimenez*, 112 Nev. at 619, 918 P.2d at 692 ("A reasonable probability is one sufficient to undermine confidence in the outcome."). The mere possibility that the report may have affected the outcome of the trial does not establish materiality. *Id.*

Seka does not allege that the State accused him of stealing the purse or argued that the purse itself was evidence of his guilt. In fact, the prosecutor stated during trial that the stolen purse was "[n]ot important." And the jury heard testimony that other people had access to the location where the stolen purse was discovered. Thus, we are unconvinced by Seka's assertion that the fingerprint report undermines the State's entire theory of the case. Moreover, as this court explained in *Seka III*, "the physical and circumstantial evidence overwhelmingly supported a guilty verdict as to both murders." 137 Nev. at 316, 490 P.3d at 1281. The exclusion of Seka as the source of the fingerprints on the purse neither undermines that evidence nor our confidence in the outcome at trial. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

In claim 2 of his petition, Seka alleged that he is actually innocent based on new DNA evidence. *See Berry v. State*, 131 Nev. 957, 967, 363 P.3d 1148, 1154 (2015) (explaining that a showing of actual innocence acts as a gateway for substantive review of procedurally defaulted postconviction claims). Seka asserts that an unknown DNA profile found on victim Eric Hamiliton's fingernails shows that Seka was not responsible

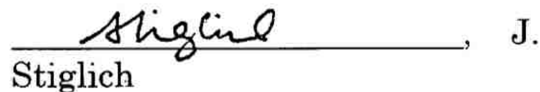
for Hamilton's death. This evidence is not new. It was presented in support of Seka's motion for a new trial based on newly discovered DNA evidence, which this court previously considered. *See Seka III*, 137 Nev. at 312, 490 P.3d at 1277 (acknowledging 2018 testing of DNA from Hamilton's fingernail clippings that excluded Seka as a contributor). There, this court concluded that the DNA evidence had minimal evidentiary value given that there was no evidence that Hamilton struggled with the murderer, and the amount of DNA was so small that there may not have been a second contributor. *Id.* at 315, 490 P.3d at 1280. This court therefore concluded that "the new DNA evidence does not make a different outcome reasonably probable here and is not 'favorable' to the defense as necessary to warrant a new trial." *Id.* at 318, 490 P.3d at 1282.

Seka asserts that the law-of-the-case doctrine does not apply because the habeas claim is different from the one decided in *Seka III*. We find this argument unpersuasive. *See Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975) ("The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings."). Although "substantially new or different evidence" may avoid the doctrine of the law of the case, *Hsu v. County of Clark*, 123 Nev. 625, 630, 173 P.3d 724, 729 (2007) (discussing "specific exceptions to the law of the case doctrine"), Seka simply presents the same evidence to support a different claim for relief, *see Clem v. State*, 119 Nev. 615, 620, 81 P.3d 521, 525 (2003) (explaining that the doctrine of the law of the case applies to subsequent claims "in which the facts are substantially the same"). Because this claim is barred by the law-of-the-

case doctrine, the district court therefore did not err in denying this claim without conducting an evidentiary hearing.[1]

Having considered Seka's arguments and concluded that they do not warrant relief, we

ORDER the judgment of the district court AFFIRMED.



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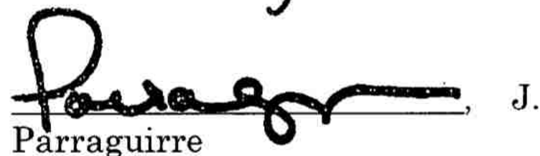

_______________, J.
Parraguirre

cc: Hon. Kathleen E. Delaney, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[1]Given this conclusion, we need not address the parties' arguments about whether a freestanding claim of actual innocence is cognizable in a postconviction habeas petition. *See Berry v. State*, 131 Nev. 957, 967 n.3, 363 P.3d 1148, 1154 n.3 (2015) (recognizing that "[t]his court has yet to address whether and, if so, when a free-standing actual innocence claim exists").