

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUNIOR WALKER MILLS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38690

FILED

APR 09 2003

ORDER OF AFFIRMANCE

JANE T. M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's proper person motion for a new trial based on newly discovered evidence.

On June 8, 2000, the district court convicted appellant, pursuant to a jury verdict, of one count each of first-degree murder with the use of a firearm and robbery with the use of a firearm. The district court sentenced appellant to serve two terms of life in prison without the possibility of parole for the first-degree murder charge and two terms of 72 to 180 months in prison for the robbery with the use of a firearm charge, all terms running consecutively. Appellant was also ordered to pay \$39,582.13 in restitution. This court affirmed appellant's conviction on direct appeal.¹

¹Mills v. State, Docket No. 36275 (Order of Affirmance, July 11, 2001).

Appellant subsequently submitted a proper person motion requesting the district court to grant him a new trial “based on newly discovered evidence.”² On October 11, 2001, the district court entered an order denying the motion. This appeal followed.

In his motion, appellant claimed, among other things,³ that he was entitled to a new trial because the transcript from the pretrial status hearing conducted on March 17, 2000, and letters from the Office of the Washoe County Sheriff indicated that the Sheriff’s Office had somehow been involved in bribery that affected appellant’s case. To warrant a new trial on newly discovered evidence, the evidence must be:

²See NRS 176.515(1).

³Appellant also claimed that (1) his counsel had “turn[ed] States Evidence,” (2) his First Amendment rights were violated when the district court allowed the testimony of Detective Stephanie Moen and John Ward to be admitted, (3) his Fourth Amendment rights were violated “of which stands unopposed, regarding unreasonable search and seizures,” (4) his Fifth Amendment rights were violated “through compelling [appellant’s] testimony during trial,” (5) his Sixth Amendment rights were violated when the district court declared a bomb scare and cleared the courtroom, (6) his Eighth Amendment rights were violated “because it is a basic principal [sic] of American Justice that no man is guilty until pronounced so after a fair trial.” Appellant waived these claims by failing to raise them in his direct appeal. See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (stating that claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings) overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

newly discovered; material to the defense; such that even with the exercise of reasonable diligence it could not have been discovered and produced for trial; non-cumulative; such as to render a different result probable upon retrial; not only an attempt to contradict, impeach, or discredit a former witness, unless the witness is so important that a different result would be reasonably probable; and the best evidence the case admits.⁴

The decision to grant or deny a new trial is within the district court's discretion, and this court will not reverse absent abuse of that discretion.⁵

On direct appeal, this court concluded that the evidence that appellant killed the victim was overwhelming and that the evidence that he did so during the perpetration of a robbery was substantial. In his motion for new trial, appellant failed to provide any supporting facts demonstrating the existence of any new evidence warranting a new trial.⁶ Appellant did not establish how the transcript from the pretrial status hearing of March 17, 2000, or the letters from the Office of the Washoe County Sheriff would have been material to the defense or probative of any misconduct in appellant's case. Further, appellant failed to establish that the transcripts from the pretrial status hearing could not have been discovered and produced for trial with the exercise of reasonable diligence.

⁴Funches v. State, 113 Nev. 916, 923-24, 944 P.2d 775, 779-80 (1997).


⁵Id. at 923, 944 P.2d at 779.


⁶See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

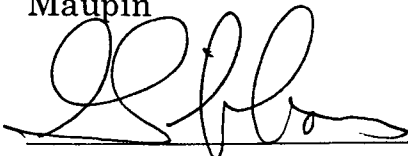
Therefore, we conclude that the district court did not abuse its discretion in denying appellant's motion.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Junior Walker Mills
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.