

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD LEE BEETS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39361

**FILED**

OCT 07 2003

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.

On November 7, 1989, the district court convicted Edward Lee Beets, pursuant to a jury verdict, of first degree murder with the use of a deadly weapon, attempted murder with the use of a deadly weapon, mayhem with the use of a deadly weapon, first degree kidnapping with the use of a deadly weapon, sexual assault with the use of a deadly weapon, two counts of sexual assault of a minor, and burglary. After the penalty phase, the jury was deadlocked and unable to reach a verdict on sentencing. This court then ordered a three-judge panel to conduct a penalty hearing pursuant to former NRS 175.556.<sup>1</sup> The panel found four aggravating circumstances and no mitigating circumstances. The panel then sentenced appellant to death. This court affirmed Beets' judgment of conviction and sentence.<sup>2</sup> The United States Supreme Court denied Beets' certiorari petition on October 5, 1992, and this court's remittitur issued on October 20, 1992.

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<sup>1</sup>See 2003 Nev. Stat., ch. 366, § 3.

<sup>2</sup>See Beets v. State, 107 Nev. 957, 821 P.2d 1044 (1991).

On September 3, 1993, Beets filed a timely post-conviction petition for a writ of habeas corpus in the district court. While his petition was pending in the district court, Beets filed a motion for partial summary judgment, which the district court denied. This court dismissed Beets' appeal from that order for lack of jurisdiction.<sup>3</sup> After the appeal was dismissed, the district court conducted evidentiary hearings on Beets' petition. On February 20, 2002, the district court denied all claims in Beets' petition. This appeal followed.

A person seeking post-conviction relief cannot rely on conclusory claims for relief but must support any claims with specific factual allegations that, if true, would entitle him or her to relief.<sup>4</sup> "If an appellant fails to present authorities in support of an alleged error we will consider the assignment only if the error is so unmistakable that it is revealed by the casual inspection of the record."<sup>5</sup> "Contentions unsupported by specific argument or authority should be summarily rejected on appeal."<sup>6</sup> Moreover, a habeas petitioner must demonstrate good cause and prejudice for raising claims which could have been raised in earlier proceedings.<sup>7</sup>

Beets raises a number of claims that should be summarily rejected because Beets failed to provide authority, cogent argument, and/or specific factual allegations in support of these claims and because these claims are raised as direct appeal claims without a showing of good

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<sup>3</sup>See Beets v. State, 110 Nev. 339, 871 P.2d 357 (1994).

<sup>4</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>5</sup>Franklin v. State, 89 Nev. 382, 386, 513 P.2d 1252, 1255 (1973).

<sup>6</sup>Mazzan v. Warden, 116 Nev. 48, 75, 993 P.2d 25, 42 (2000).

<sup>7</sup>See NRS 34.810(1)(b).

cause and prejudice for failing to raise them earlier: appellant's rights at trial were violated by the introduction of prejudicial photographs of the victim; appellant was deprived of a fair trial by prosecutorial misconduct; the trial court erred in admitting evidence of other crimes; imposition of the death penalty in this case is excessive and disproportionate and constitutes cruel and unusual punishment; Nevada's statutory penalty framework is unconstitutionally vague and fails to provide the jury with sufficient guidance in death penalty cases; and this court's decision on direct appeal fails to demonstrate that it considered all evidence of existing nonstatutory mitigating circumstances.

Beets also raises approximately forty claims of ineffective assistance of trial counsel. Beets fails to support any of these claims with specific factual allegations.<sup>8</sup> He attempts to incorporate by reference a document entitled "Memorandum: Evidentiary Hearing" filed in the district court. In his appeal, he claims that in this document he has "delineated with specificity all of the claims of ineffective assistance." An appellant is not allowed to incorporate by reference documents filed in the district court.<sup>9</sup> Moreover, this document does not provide sufficient facts to support Beets' claims. In addition, Beets fails to articulate how counsel's actions prejudiced him.<sup>10</sup> Thus, Beets has failed to demonstrate that the district court erred in denying these claims of ineffective assistance of trial counsel.

In connection with his ineffective assistance of counsel claims, Beets claims that his counsel were so ineffective that their actions

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<sup>8</sup>See Hargrove, 100 Nev. 498, 686 P.2d 222.

<sup>9</sup>See NRAP 28(e).

<sup>10</sup>See Strickland v. Washington, 466 U.S. 668 (1984).

amounted to an abandonment of their roles as advocates. In particular, Beets appears to claim that his counsel failed to communicate with him before trial. We conclude that this claim is without merit. The record shows that Beets refused to cooperate with counsel on most occasions. Thus, the lack of communication was not the fault of his counsel but Beets himself. Moreover, despite Beets' lack of communication the record reflects that counsel adequately represented Beets at the guilt and penalty phases of his trial.

Beets also raises claims that are barred by the doctrine of law of the case.<sup>11</sup> These claims include: the kidnapping charge should have been dismissed; on direct appeal this court failed to conduct a harmless error analysis after holding that the depravity of mind aggravator was improperly submitted to the jury; the reasonable doubt jury instruction was infirm; this court mistakenly held that the jury instruction regarding the depravity of mind aggravator was harmless error; the aggravator that the murder was committed while Beets was engaged in the commission of or attempt to commit a sexual assault was improper; and the aggravator that the murder was committed while Beets was engaged in the commission of or an attempt to commit any burglary was erroneous.

Next, Beets raises many additional claims that are barred because he does not demonstrate good cause for failing to raise them on direct appeal and actual prejudice.<sup>12</sup> Beets raises a separate claim that his appellate counsel "failed to raise all the available issues on direct appeal which have been identified herein." This court has held that it "will not accept such conclusory, catchall attempts to assert ineffective assistance of counsel. If first-time applicants for post-conviction habeas

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<sup>11</sup>See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

<sup>12</sup>See NRS 34.810(b)(2).

relief fail to argue specifically that their trial or appellate counsel were ineffective in regard to an issue or to show good cause for previously failing to raise the issue, that issue will not be considered, pursuant to NRS 34.810.”<sup>13</sup>

These procedurally barred claims include: this court failed to reach a majority decision as to the validity of appellant’s death sentence; there was insufficient evidence of premeditation and deliberation, and the jury instructions regarding premeditation and deliberation were insufficient; the trial court erred in finding appellant competent to stand trial; Nevada’s death penalty statute is unconstitutional as it fails to truly narrow the category of eligible defendants; the jury was not instructed that it must find that a statutory aggravator existed beyond a reasonable doubt before it could consider nonstatutory aggravating circumstances; Nevada’s death penalty statute is unconstitutionally vague because it allows for the use of unspecified nonstatutory aggravating circumstances; NRS 200.033 disallows aggravating evidence that does not establish the aggravating circumstances specifically set forth in the statute; the trial court improperly allowed the State to make opening and closing summations at the penalty phase; Nevada’s death penalty statute is unconstitutionally vague and ambiguous and fails to adequately provide the jury with guidance in deciding whether an appellant should live or die; Nevada’s death penalty statute and the jury instructions in Beets’ case violate the U.S. Supreme Court’s ruling in Mills v. Maryland;<sup>14</sup> this court did not demonstrate in its decision affirming Beets’ judgment of conviction and sentence that it complied with the rule set down in Espinosa v.

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<sup>13</sup>Evans v. State, 117 Nev. 609, 647, 28 P.3d 498, 523 (2001).

<sup>14</sup>486 U.S. 375 (1988).

Florida,<sup>15</sup> this court's decision affirming Beets' judgment of conviction and sentence violates Richmond v. Lewis;<sup>16</sup> this court's decision affirming Beets' judgment of conviction and sentence fails to satisfy the analytical requirements emphasized in Sochor v. Florida;<sup>17</sup> the penalty phase jury instructions unconstitutionally required Beets to bear the burden of proof as to the weighing of aggravating versus mitigating circumstances; the penalty phase jury instructions were unconstitutional because they allowed the jury to consider unspecified evidence presented at the guilt phase not relevant to the determination of aggravating and mitigating factors during the penalty phase; the death penalty is cruel and unusual punishment in all circumstances and is prohibited by the Eighth Amendment to the U.S. Constitution; the death penalty is unconstitutional under Article 1, Section 6 of the Nevada Constitution, which prohibits cruel or unusual punishment; the jury was improperly instructed on the definition of a deadly weapon; the penalty instructions erroneously implied that the jury must find the existence of mitigating factors beyond a reasonable doubt before weighing them against the aggravating factors; the aggravating circumstance regarding a previous felony involving the use or threat of violence to another was erroneous because there was no showing that the robbery committed by Beets involved such threat or violence; the jury instructions pertaining to mitigating circumstances were unconstitutionally vague and precluded the jury from properly considering the mitigating evidence presented; and the jury instruction on malice was unconstitutional.

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<sup>15</sup>505 U.S. 1079 (1992).

<sup>16</sup>506 U.S. 40 (1992).

<sup>17</sup>504 U.S. 527 (1992).

Beets failed to specifically argue the above claims as ineffective assistance of trial or appellate counsel, and he failed to demonstrate good cause for not raising these claims earlier. Moreover, we conclude that these claims are without merit; therefore, Beets has failed to demonstrate prejudice, and they are barred by NRS 34.810.

Next, Beets specifically raises two claims of ineffective assistance of appellate counsel. First, he claims that appellate counsel failed to raise the issue of whether the jury, the three-judge panel, and this court correctly understood that the sentencer did not need to unanimously agree on mitigating circumstances. Beets failed to support this claim with sufficient factual allegations. Therefore, this claim fails.

Second, he claims that appellate counsel failed to specifically argue on direct appeal that it is unconstitutional for a three-judge panel to determine the appropriate penalty in a capital case where the jury has been unable to decide on a sentence. Beets argues that Ring v. Arizona,<sup>18</sup> holding that a capital sentencing scheme requiring a judge to determine aggravating circumstances violates the Sixth Amendment right to a jury trial, applies to him and his sentence should be vacated. We conclude that appellate counsel was not ineffective for failing to raise this claim. At the time of Beets' trial, NRS 175.556 provided for a three-judge panel to decide a defendant's sentence in a death penalty case when the jury was unable to unanimously reach a sentencing verdict and was valid law. This court only recently concluded pursuant to Ring that this procedure was


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<sup>18</sup>536 U.S. 584 (2002).

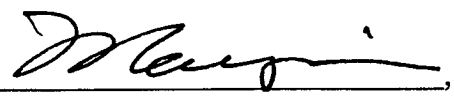
unconstitutional.<sup>19</sup> Moreover, this court has held that Ring does not apply retroactively on collateral review.<sup>20</sup> Therefore, this claim is without merit.

Finally, Beets claims that he was not sane at the time of the crime and that his death sentence should be overturned pursuant to Atkins v. Virginia.<sup>21</sup> Because this claim was never specifically presented to or considered by the district court, this court will not entertain it. Moreover, this court previously ruled that Beets should raise this claim in a separate post-conviction petition for a writ of habeas corpus promptly filed in the district court.<sup>22</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Maupin

cc: Hon. Donald M. Mosley, District Judge  
Kelly & Sullivan, Ltd.  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>19</sup>Johnson v. State, 118 Nev. \_\_\_, 59 P.3d 450 (2002).

<sup>20</sup>Colwell v. State, 118 Nev. \_\_\_, 59 P.3d 463 (2002), petition for cert. filed, No. 02-10947 (U.S. May 21, 2003).

<sup>21</sup>536 U. S. 304 (2002).

<sup>22</sup>See Beets v. State, Docket No. 39361 (Order Resolving Motions, December 6, 2002).