

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN LEE LAYTON,  
Appellant,  
vs.  
WARDEN, ELY STATE PRISON, E.K.  
MCDANIEL,  
Respondent.

No. 40716

FILED

JUN 2 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

This is an appeal from an order of the district court dismissing appellant John Lee Layton's post-conviction petition for a writ of habeas corpus.

In 1981, the district court, pursuant to a jury verdict, convicted Layton of attempted murder and battery with the use of a deadly weapon of fellow prison inmate Ronald Dean Smith. The district court sentenced Layton to twenty years for attempted murder and a concurrent ten-year sentence for battery with a deadly weapon. Both sentences were run consecutively to a sentence of life without the possibility of parole for an unrelated murder. Layton appealed, and this court affirmed the judgment of the district court.<sup>1</sup>

In 1989, Layton filed a proper person post-conviction petition for a writ of habeas corpus in the district court. In April 1991, before the district court acted on the petition, Layton filed a motion for leave to amend his petition based upon newly discovered exculpatory evidence implicating another prison inmate, Gerald Weakland, in the crimes. One month later, the district court denied Layton's petition concluding that he

<sup>1</sup>See Layton v. State, 99 Nev. 253, 661 P.2d 877 (1983).

raised issues that should have been raised on direct appeal and that he never sought relief under NRS Chapter 177 first as required by NRS 34.725. The district court incorrectly understood Layton's previous motion to amend as part of a different petition. Layton then filed a motion for rehearing claiming that the district court incorrectly denied his petition because he possessed this newly discovered evidence regarding Weakland, which established good cause and prejudice to overcome the procedural bars. The district court then vacated its order denying the petition. The State moved to dismiss on procedural grounds. On December 7, 1992, the district court dismissed Layton's petition except for his claim of newly discovered evidence, in regard to which it found good cause and actual prejudice to excuse the procedural defects. On November 17, 1993, the district court issued a writ of habeas corpus concluding that Layton was entitled to an evidentiary hearing on the remaining claim. The district court finally conducted an evidentiary hearing on January 4, 2001, and subsequently dismissed Layton's petition on December 10, 2002.<sup>2</sup> This appeal followed.

---

<sup>2</sup>We note that the district court order states that "the petitioner must show by clear and convincing evidence that, but for a constitutional error, no reasonable juror would have found petitioner guilty." This is the standard if a petitioner is unable to establish good cause and prejudice to overcome a procedural bar. However, if a petitioner can demonstrate that good cause exists for failing to raise the claims earlier, it is sufficient to show that prejudice would result if the claims were not considered. See NRS 34.726; NRS 34.810; Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); see also Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Good cause is established by demonstrating that some impediment external to the defense prevented petitioner from raising his claims earlier, and prejudice is established by demonstrating that petitioner is entitled to relief. See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994). Despite the district court's failure to cite the cause and

*continued on next page . . .*

Layton filed his post-conviction petition for a writ of habeas corpus in this district court over six years after the court issued the remittitur from his direct appeal. Thus, Layton's petition was untimely filed.<sup>3</sup> Layton's petition therefore is procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>4</sup>

In an attempt to excuse his procedural defect, Layton claims that the State violated Brady v. Maryland<sup>5</sup> by withholding various pieces of material evidence. We conclude that the district court did not err in dismissing Layton's petition because he failed to demonstrate that the State violated Brady.

Brady requires a prosecutor to disclose evidence favorable to the defense when that evidence is material either to guilt or to punishment.<sup>6</sup> "[T]here are three components to a Brady violation: the evidence at issue is favorable to the accused; the evidence was withheld by the State, either intentionally or inadvertently; and prejudice ensued, i.e., the evidence was material."<sup>7</sup> When a Brady claim is raised in an untimely post-conviction petition for a writ of habeas corpus, the petitioner has the burden of pleading and proving specific facts that demonstrate good cause

---

*... continued*

prejudice standard, we conclude that the district court correctly determined that Layton's claims were without merit and he therefore failed to demonstrate actual prejudice to excuse the procedural defect.

<sup>3</sup>See NRS 34.726(1).

<sup>4</sup>See id.

<sup>5</sup>373 U.S. 83 (1963).

<sup>6</sup>See Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000).

<sup>7</sup>Id. at 67, 993 P.2d at 37.

and actual prejudice to overcome the procedural bar.<sup>8</sup> Good cause and prejudice parallel the second and third Brady components.<sup>9</sup> Cause can be shown by proving that the State withheld the evidence.<sup>10</sup> Prejudice can be shown by proving that the withheld evidence was material.<sup>11</sup>

Two standards exist to determine the materiality of the withheld evidence. If there was a general request for information, the standard to determine the materiality is that a reasonable probability existed that the result would have been different if the evidence had been disclosed.<sup>12</sup> If there was a specific request for information, the standard in Nevada to determine materiality is whether there was a reasonable possibility that the result would have been different had the evidence been disclosed.<sup>13</sup>

Layton first claims that the State withheld two exculpatory prison documents. Both documents state that investigations by prison staff and statements made by confidential informants confirmed that Weakland "participated in the assault" of Smith. Because Layton maintained his innocence and because his codefendant Eddie Eckert testified at trial that he and an unidentified person other than Layton were the assailants, Layton claims that these documents were material

---

<sup>8</sup>See id.; see also NRS 34.726(1).

<sup>9</sup>See Mazzan, 116 Nev. at 67, 993 P.2d at 37.

<sup>10</sup>See id.

<sup>11</sup>See id. at 66-67, 993 P.2d at 36.

<sup>12</sup>See id.

<sup>13</sup>See id.

exculpatory evidence because they identified the other assailant, Weakland.

The State claims that these documents were not exculpatory because a later entry in one of the documents also states, "We found no substantial or formal charge. Therefore can't hold in super max." In addition, the State points out that nothing in these documents indicates that Layton was not involved in the crime. The State also claims that Layton listed Weakland as an alibi witness at trial. The State, therefore, concludes that a reasonable probability does not exist that the result of the trial would have been different had this evidence been disclosed. We agree.

The first document at issue is a memo signed by prison officials Robin Bates and Captain Gary True dated 6/6/80. This document states:

[T]he above subject [Weakland] was reviewed by a special classification committee on this date. Investigations by prison staff and statements made by confidential informants have confirmed that Gerald Weakland participated in the assault of Ronald Dean Smith. Mr. Weakland is being transferred to the Max Housing Unit pending a 90 day review.

The second document is labeled "Classification Committee Progress Report." This document has various dated entries regarding Weakland. One entry dated 6/6/80 states, "Investigation and confidential informants have confirmed that Weakland participated in the assault on Ronald Smith. Subj. denies this. Will remain in max housing pending 90 day rev." The following entry dated 7/14/80 states, "We found no substantial or formal charge. Therefore can't hold in super max."

Under Brady, the first question is whether the evidence at issue is favorable to the defense. We conclude that the information in the first document is favorable to Layton because he could have used it to suggest that Weakland was Eckert's accomplice. However, the information in the second document is not favorable to Layton when considered in its entirety.

The second question is whether the State withheld the evidence. Layton claims that he never received these documents. The State claims that Layton may have received the first document and that even if Layton did not receive these documents, any withholding was unintentional. We conclude that the State withheld these documents under Brady even if they remained in the possession only of prison officials and despite the State's motive.

A "state attorney is charged with constructive knowledge and possession of evidence withheld by other state agents."<sup>14</sup> Because the prison officials are State agents, the prosecuting attorney had constructive knowledge of their evidence regarding Weakland. Therefore, the State was required to disclose this information to Layton. Although it is possible that Layton received the first document, the record is unclear. And no evidence exists showing that Layton received the second document.

Consequently, we must determine if this evidence was material. Pursuant to the record on appeal, a specific request for discovery was never made. Therefore, the standard to determine the

---

<sup>14</sup>See Jimenez v. State, 112 Nev. 610, 620, 918 P.2d 687, 693 (1996) (quoting Gorham v. State, 597 So. 2d 782, 784 (Fla. 1992)); see also Bennett v. State, 119 Nev. \_\_\_, \_\_\_, 81 P.3d 1, 8-9 (2003).

materiality of this evidence is whether a reasonable probability exists that the result of the trial would have been different had this evidence been disclosed.<sup>15</sup> We conclude that such a probability does not exist.

Although both documents stated that Weakland might have been involved in the crime, one document stated that no formal charges were ever found against him. In addition, these documents did not state that Layton was not involved in the crime. They simply stated that Weakland "participated." Although Layton claims that he could have used the documents to suggest that Weakland was Eckert's accomplice, Layton would have had a difficult time doing so because the jury heard the testimony of Smith who specifically stated that Layton was Eckert's accomplice. Moreover, Layton listed Weakland as an alibi witness, which contradicts his claim that Weakland was Eckert's accomplice. Lastly, at trial Layton and Eckert filed a motion to dismiss; however, before they presented their case to the jury they moved to withdraw the motion because, in Layton's words at the time, "it might infer maybe participation on other people's part. We don't want that." This action is inconsistent with Layton's present argument that Weakland, not Layton, committed the crime. Therefore, Layton's Brady claim regarding this evidence fails because he cannot demonstrate that this evidence was material.

Next, Layton claims that the State violated Brady in failing to disclose a memo written by Chief Investigator Wayne Teglia to prosecuting attorney Robert Manley. Layton claims that this document contained evidence that could have been used to impeach Smith.

We conclude that Layton has not demonstrated that he was entitled to this memo. At the evidentiary hearing, Teglia testified that the

---

<sup>15</sup>See Mazzan, 116 Nev. at 66, 993 P.2d at 36.

memo was his review of a file that was developed by the Carson City Sheriff's Office. He also testified that it did not appear that he had conducted any independent investigation at the time he wrote the memo. The memo was solely based upon his synopsis of the Sheriff Department's prior six-month investigation. It appears, therefore, that this memo was an internal memo prepared on behalf of the prosecuting attorney, and Layton has not shown that he was entitled to it. In addition, Layton failed to specifically articulate how the contents of the memo were helpful to him.<sup>16</sup> He merely states that it contains impeaching evidence. Lastly, Layton failed to demonstrate that he was denied access to the Sheriff's Department's file that Teglia was reviewing.<sup>17</sup> Therefore, Layton's Brady claim regarding this evidence must fail.

Layton also claims that the State violated Brady in failing to disclose a memo written by Deputy Attorney General Ernest Adler to Attorney General Richard Bryan because it evidences a deal between the State and Smith to have Smith testify at trial. In the pretrial memo, Adler stated that Smith decided to speak with the AG's office about the case, but refused to name his assailants unless the office gave him a "deal." Adler stated that the AG's office would not make any deals but would ensure Smith's safety by transferring him to a prison facility in Arizona after he testified. Adler also stated that the transfer was necessary to protect Smith from reprisals from the Aryan Warriors prison

---

<sup>16</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>17</sup>See Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998) ("Brady does not require the State to disclose evidence which is available to the defendant from other sources, including diligent investigation by the defense.").



gang. Smith, along with his mother and sister, met again with Adler to notify Adler that he would not agree to a transfer and instead wanted the AG's office to make a "deal" in exchange for Smith's testimony. Specifically, Adler stated in the memo, they wanted the AG's office to use its influence to gain Smith an immediate parole or that Bryan use his vote on the Pardons Board to secure Smith's release. Adler stated that he told Smith that the AG's office would not engage in this type of improper activity and asked them to leave his office.

Layton claims that he never received these documents, which he could have used at trial to question Smith regarding his motive to testify after he initially refused to do so. Even assuming Layton should have received this information, he has failed to demonstrate actual prejudice by the State's nondisclosure because the memo is not favorable to him or material. If anything, the memo is damaging to Layton because it shows that Smith was fearful and unwilling to testify unless he was released from prison in exchange for his testimony. Moreover, Smith testified at trial that he did not name his attackers for three or four months after the incident because he was scared for his life. He also testified that that fear had not left him. Therefore, the failure of the State to disclose this memo did not prevent Layton from questioning Smith about his motive to testify.

Next, Layton claims the State violated Brady in failing to disclose a letter written by Lt. Gov. Myron Leavitt to Prison Director Charles Wolff regarding the safety of Smith. In the letter, Leavitt states that he was notified by Smith's family that Smith finally named his attackers and that Smith's family is concerned for Smith's safety. Leavitt then requested that Wolff notify him of the "current status of the safety

precautions for Mr. Smith." Wolff wrote a response stating, "Every precaution continues to be taken to ensure his safety."

We conclude that Layton has failed to demonstrate how this letter is favorable to him or that it was material. It does not demonstrate that any "deal" was made in exchange for Smith's testimony. Therefore, Layton failed to demonstrate that the State violated Brady with respect to this piece of evidence.

In his last claim implicating Brady,<sup>18</sup> Layton asserts that the Board of Pardons grant of clemency to Smith was evidence that a deal was made between the State and Smith in exchange for his testimony. Layton also claims that the State should have disclosed Smith's application to the Pardons Board.

We conclude that Layton has not demonstrated that the State influenced the Pardons Board to grant Smith clemency. Pursuant to the Pardons Board hearing transcripts, the reasons for granting Smith clemency (immediate availability to the Parole Board) were a concern for his safety in prison and the difficulty in housing him due to his testimony at Layton's trial, the cost to send him to another prison, his scheduled appearance in front of the Parole Board in six months, and his cooperation with the State in Layton's trial. In addition, only five of the seven members voted to grant Smith clemency. Prosecutor Manley did testify at the hearing on behalf of Smith, but specifically stated that the AG's office

---

<sup>18</sup>In addition, Layton also briefly claims that the State failed to disclose a letter written by former Senator Howard Cannon who inquired about Smith's safety, allegedly evidencing a deal between the State and Smith in exchange for his testimony. Layton does not specifically articulate any facts regarding this letter, nor does he demonstrate how this letter was material.

"has made absolutely no bargain or arrangement with Mr. Smith of any kind." Layton has also failed to show that he was entitled to disclosure of Smith's Pardons Board application or that the application was material.<sup>19</sup>

Layton also claims that the district court erred in failing to determine the collective materiality of the undisclosed evidence. Further, he claims that the district court relied on "irrelevant and highly speculative evidence in arriving at its conclusions" because the court relied on testimony of Layton's defense counsel at the evidentiary hearing that the State could have delivered the material but he could not specifically remember since the trial was twenty years ago. We decline to address this issue because Layton failed to demonstrate that the State violated Brady in failing to disclose the above evidence.

Next, Layton claims that the State violated his due process rights by allowing Smith to testify falsely. He claims that in comparing Investigator Teglia's memo, Adler's memo, and Smith's testimony at trial it is evident that Smith was allowed to testify falsely three times. First, Layton claims that Smith was allowed to testify that Smith first identified his attackers to prosecutor Manley. He was then allowed to testify that he waited to identify his attackers because he was fearful. Lastly, he was allowed to testify that the reason he was attacked was because of a prison rumor that he gave information to prison officials regarding a relationship between an inmate and a prison nurse. Layton claims, however, that Teglia's memo and Adler's memo show that the reason Smith identified his attackers was to procure immediate release from prison. He also claims that Teglia's memo states that Smith did not know why he was attacked.


---

<sup>19</sup>See Hargrove, 100 Nev. 498, 686 P.2d 222.

We conclude that Layton has failed to show that the State allowed Smith to testify falsely or that Smith's testimony was false. As stated previously, Layton failed to demonstrate that the State made a deal with Smith in exchange for his testimony. In addition, there is no indication in Teglia's memo that Smith identified his attackers to procure immediate release from prison. Therefore, this claim has no merit.

We conclude that the district court did not err in dismissing Layton's petition. Layton failed to demonstrate that the State violated Brady; therefore, he failed to show good cause and prejudice to overcome the procedural bars. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

 \_\_\_\_\_, J.  
Agosti

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

cc: Hon. Dan L. Papez, District Judge  
State Public Defender/Carson City  
State Public Defender/Ely  
Attorney General Brian Sandoval/Carson City  
Attorney General Brian Sandoval/Ely  
White Pine County District Attorney  
White Pine County Clerk