IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE MICHAEL CHERRY, DISTRICT JUDGE,
Respondents,
and
PATRICK JAMES CAVANAUGH,
Real Party in Interest.

No. 41993

FILED

APR 2 8 2004

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

ORDER GRANTING PETITION

This is an original petition by the State for a writ of prohibition or mandamus challenging an order of the district court granting a post-conviction writ of habeas corpus and ordering an evidentiary hearing. This case involves the third post-conviction petition filed in state court by Patrick James Cavanaugh, real party in interest, challenging his conviction and death sentence. The petition either raises claims that have already been raised or should have been raised in prior proceedings. Nevertheless, the district court ordered an evidentiary hearing on the claims. The State has petitioned this court to halt the hearing. We conclude that the State's petition has merit and grant it.

Cavanaugh operated a fraudulent scheme to purchase furniture with forged checks. Apparently believing that an acquaintance, Nathaniel "Buster" Wilson, intended to inform the police of the scheme in return for a "secret witness" reward, Cavanaugh murdered Wilson in

1980. Cavanaugh first shot the victim in the face, then, after discovering he was still alive several hours later, cut out his vocal cords, and shot him two more times in the head. Cavanaugh then cut off the victim's hands and feet with an electric saw and attempted to cut off his head. He used acid in an attempt to remove the prints from the victim's fingers and then disposed of the remains in several locations. Cavanaugh was tried before a jury in 1984. The main witness against him was Diana Cavanaugh, his accomplice and putative wife. Pamela Cavanaugh, a former putative wife, also testified against him. Cavanaugh was convicted of first-degree murder with use of a deadly weapon. The jury also returned a death sentence after finding two aggravating circumstances: the murder was committed to avoid a lawful arrest, and it involved torture, depravity of mind, or mutilation of the victim.

This court affirmed his conviction and sentence in 1986.[1] The next year, Cavanaugh filed a petition for post-conviction relief, pursuant to former provisions of NRS chapter 177. The district court held a hearing, but Cavanaugh's counsel presented no witnesses. The district court denied the petition, and this court dismissed Cavanaugh's appeal (Docket No. 19158) in 1989.

In 1990, Cavanaugh filed a post-conviction petition for a writ of habeas corpus. The district court held a three-day evidentiary hearing and initially granted the writ. While the State's appeal (Docket No. 25558) was pending, the district court issued an order certifying that if it had jurisdiction, it would vacate its order granting the writ and reopen the proceedings to consider allegations that Cavanaugh had committed fraud

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[1]Cavanaugh v. State, 102 Nev. 478, 729 P.2d 481 (1986).

on the court. This court filed an order of remand directing the district court to vacate its order granting the writ and conduct further proceedings. The district court held another evidentiary hearing, found that Cavanaugh had perpetrated fraud on the court, and entered an amended order dismissing Cavanaugh's petition. Cavanaugh appealed (Docket No. 31072), and this court dismissed the appeal in 1998.

Cavanaugh petitioned the federal court for habeas relief. In 2001, the federal court dismissed the petition without prejudice for lack of exhaustion of claims in state court. Cavanaugh then filed his third post-conviction petition in state court. To support his claim that the penalty instructions misled the jury, he offered new evidence in the form of an affidavit by the presiding juror. That juror stated that the jurors believed that there was "no practical difference between Life With and Life Without."[2] According to her affidavit, she now understands that the relevant law

> specifically prohibited the parole board from granting parole on a sentence which has been commuted from Life Without until a prisoner had served a minimum of twenty years. I am certain that the jury would not have sentenced Patrick Cavanaugh to Death had it been told that he would be imprisoned a minimum of twenty years before he could possibly be released, if he were sentenced to Life Without.[3]

Although the State asserted that the petition was procedurally barred, the district court ruled that Cavanaugh was entitled to an evidentiary hearing on his claims. Its order stated in part:

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[2]Cavanaugh's ex. C ("Affidavit of Laurel Duffy"), at 4.

[3]Id. at 5.

> The federal court order required Cavanaugh to return to state court to exhaust all but one of his claims, despite the state court proceedings that have already occurred. This, in [and] of itself[,] is cause for Cavanaugh to proceed on his petition. The apparently inconsistent determinations in state and federal court are "official actions" over which Cavanaugh has no control, because implicit in the federal decision is a conclusion that the prior state courts' determinations, at least as to issues of procedural default, were erroneous. . . .
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> This Court's finding that Cavanaugh has met his burden of demonstrating good cause is further supported by the fact that Cavanaugh has alleged at all relevant stages of the prior proceedings and in the instant case that ineffective assistance of counsel is good cause for his procedural default under NRS 34.810. Moreover, as required by the Nevada Supreme Court in Hathaway,[4] that claim is not procedurally defaulted.
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> Additionally, at least one of Cavanaugh's claims relating to a jury note implicates issues previously litigated in the state courts but also involves "new" facts of which Cavanaugh could not reasonably [have] been aware or discovered until recently. . . . It was only with the passage of time, which included gaining a legal education and experience in the practice of law, that the [presiding] juror was able to articulate what went "wrong" at the penalty phase of the trial. This information would not have been available to Cavanaugh sooner.[5]

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[4]Hathaway v. State, 119 Nev. ___, 71 P.3d 503 (2003).

[5]State's ex. 15 (District Court's "Order Re: Evidentiary Hearing"), at 3-4.

The order also rejected the State's laches claim as "perfunctory."[6] The district court granted a continuance to allow the State to pursue this petition before this court.

The Nevada Constitution grants this court the power to issue writs of mandamus and of prohibition.[7] 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 a manifest abuse of or arbitrary or capricious exercise of discretion.[8] It may issue a writ of prohibition to arrest the proceedings of any tribunal exercising judicial functions in excess of its jurisdiction.[9] Neither writ issues where the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.[10] This court considers whether judicial economy and sound judicial administration militate for or against issuing either writ.[11] Mandamus and prohibition are extraordinary remedies, and the decision to entertain a petition lies within the discretion of this court.[12]

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[6]Id. at 4.

[7]Nev. Const. art. 6, § 4.

[8]See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

[9]See NRS 34.320; Hickey v. District Court, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989).

[10]See NRS 34.170; NRS 34.330; Hickey, 105 Nev. at 731, 782 P.2d at 1338.

[11]See State v. Babayan, 106 Nev. 155, 175-76, 787 P.2d 805, 819 (1990).

[12]Hickey, 105 Nev. at 731, 782 P.2d at 1338.

Application of the procedural default rules to post-conviction habeas petitions is mandatory.[13] The Nevada Legislature "never intended for petitioners to have multiple opportunities to obtain post-conviction relief absent extraordinary circumstances."[14] "Where the intention of the Legislature is clear, it is the duty of the court to give effect to such intention and to construe the language of the statute so as to give it force and not nullify its manifest purpose."[15] "Habeas corpus petitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final."[16]

This court has granted original mandamus relief in cases comparable to this one. We did so in directing a district court to resentence a defendant in accordance with relevant statutory provisions,[17] and in a personal injury action we concluded that "[w]hen the right to a dismissal is clear, the extraordinary relief of mandamus is available to compel dismissal."[18]

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[13]State v. Haberstroh, 119 Nev. ___, ___, 69 P.3d 676, 681 (2003).

[14]Pellegrini v. State, 117 Nev. 860, 876, 34 P.3d 519, 530 (2001).

[15]Woofter v. O'Donnell, 91 Nev. 756, 762, 542 P.2d 1396, 1400 (1975) (granting mandamus relief and directing the district court to resentence a defendant in accordance with relevant statutory provisions).

[16]Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984).

[17]Woofter, 91 Nev. 756, 542 P.2d 1396.

[18]State ex rel. Dep't Hwys. v. District Ct., 95 Nev. 715, 718, 601 P.2d 710, 711 (1979).

Given the foregoing law, we conclude that extraordinary relief is warranted here. As explained below, the district court manifestly abused its discretion and ignored its duty to give effect to legislative intent when it ordered an evidentiary hearing despite Cavanaugh's failure to demonstrate good cause to overcome mandatory procedural bars. Furthermore, extraordinary relief will promote judicial economy and sound judicial administration. Though Cavanaugh argues that the State has a legal remedy in the form of an appeal if the district court grants Cavanaugh relief after the hearing, this remedy is not speedy or adequate since it will not prevent an unwarranted evidentiary hearing that wastes the time and resources of both the district court and the State.

The procedural rules pertinent to this case are the following. NRS 34.726(1) provides in part that absent a showing of good cause for delay, a petition challenging the validity of a judgment or sentence must be filed within one year after this court issues its remittitur on direct appeal.[19] Good cause requires the petitioner to demonstrate that the delay was not his fault and that dismissal of the petition will unduly prejudice him.[20]

NRS 34.810(2) provides that a second or successive petition must be dismissed if "it fails to allege new or different grounds for relief and . . . the prior determination was on the merits or, if new and different grounds are alleged, . . . the failure of the petitioner to assert those

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[19]In this case, because NRS 34.726 was enacted after Cavanaugh was convicted, the one-year deadline extended from January 1, 1993, the effective date of NRS 34.726. See Pellegrini, 117 Nev. at 874-75, 34 P.3d at 529.

[20]NRS 34.726(1).

grounds in a prior petition constituted an abuse of the writ."[21] A petitioner can avoid dismissal if he meets the burden of pleading and proving specific facts that demonstrate good cause for his failure to present a claim before or for presenting a claim again and actual prejudice.[22] To show good cause, a petitioner must demonstrate that an impediment external to the defense prevented him from complying with procedural default rules.[23] Actual prejudice requires a petitioner to demonstrate "'not merely that the errors of trial created a possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceeding with error of constitutional dimensions.'"[24] Absent a showing of good cause to excuse procedural default, this court will consider claims only if the petitioner demonstrates that failure to consider them will result in a fundamental miscarriage of justice.[25]

Furthermore, the law of a prior appeal is the law of the case in later proceedings in which the facts are substantially the same; this

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[21]See also NRS 34.810(1)(b).

[22]NRS 34.810(3).

[23]See Crump v. Warden, 113 Nev. 293, 302, 934 P.2d 247, 252 (1997).

[24]Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170 (1982)).

[25]See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

doctrine cannot be avoided by more detailed and precisely focused argument.[26]

Finally, NRS 34.800(1) provides that a court may dismiss a petition if delay in its filing either prejudices the State "in responding to the petition, unless the petitioner shows that the petition is based upon grounds of which he could not have had knowledge by the exercise of reasonable diligence" before the prejudice arose, or prejudices the State "in its ability to conduct a retrial of the petitioner, unless the petitioner demonstrates that a fundamental miscarriage of justice has occurred." If long enough, delay leads to a presumption of prejudice: "A period exceeding 5 years between . . . a decision on direct appeal of a judgment of conviction and the filing of a petition challenging the validity of a judgment of conviction creates a rebuttable presumption of prejudice to the state."[27]

Cavanaugh acknowledges in his habeas petition[28] that it is untimely and that his claims either have been raised before (or elements of claims have been raised before) or are now raised for the first time.[29]

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[26]See Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

[27]NRS 34.800(2).

[28]See State's ex. 1 (Cavanaugh's "Petition for Writ of Habeas Corpus (Post-Conviction)), at 16-22.

[29]One claim was not raised before and could not have been, but also should not be raised now. Ground 24 of the petition alleges that Cavanaugh may become incompetent to be executed. State's ex. 1, at 73-74. This issue is not an actual controversy upon which this court can render a judgment. See State v. Viers, 86 Nev. 385, 386-87, 469 P.2d 53, 54 (1970).

We conclude that all his assertions of good cause fail, whether in regard to repeating claims, raising them for the first time, or filing his petition in an untimely manner.

To begin with, the district court's finding that Cavanaugh had established good cause was without basis and a manifest abuse of its discretion. First, without providing any analysis or citing any authority, the district court declared that the federal court order requiring Cavanaugh to exhaust his claims in state court was good cause "because implicit in the federal decision is a conclusion that the prior state courts' determinations, at least as to issues of procedural default, were erroneous."[30] The district court was mistaken. The federal court did not address issues of procedural default. As it stated: "Respondents have also moved to dismiss for procedural default violations by the petitioner. The court will deny this portion of the motion, without prejudice to renewal. Petitioner will return to this court one last time following state court exhaustion, and respondent will undoubtedly wish to present all of the procedural default arguments at one time."[31]

Second, citing without any analysis this court's recent opinion in Hathaway v. State,[32] the district court stated that good cause existed because Cavanaugh had consistently alleged ineffective assistance of counsel.[33] But we did not hold in Hathaway that consistent claims of

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[30]State's ex. 15, at 3.

[31]Ex. A (Federal Court's "Order Granting Motion to Dismiss for Lack of Exhaustion") to State's ex. 3, at 19.

[32]119 Nev. ___, 71 P.3d 503.

[33]State's ex. 15, at 3-4.

ineffective assistance of counsel constitute good cause. Rather, we explained:

> A claim of ineffective assistance of counsel may also excuse a procedural default if counsel was so ineffective as to violate the Sixth Amendment. However, in order to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted. . . . Thus, a claim or allegation that was reasonably available to the petitioner during the statutory time period would not constitute good cause to excuse the delay.[34]

Likewise, good cause is necessary to reraise claims of ineffective counsel presented before. Cavanaugh has not explained why his claims of ineffective assistance of counsel either were not reasonably available earlier or, in some instances, are being raised again.

Third, the district court found that the affidavit from the presiding juror at the trial was new evidence that constituted good cause for Cavanaugh to challenge the jury instructions on clemency in the penalty phase.[35] Cavanaugh argues that the instructions incorrectly led the jurors to believe that there was no practical difference between a term of life without possibility of parole and one with the possibility of parole and failed to inform them that he would be imprisoned a minimum of twenty years if sentenced to a term of life without.[36] As good cause for not

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[34]119 Nev. at ___, 71 P.3d at 506 (emphasis added; footnotes omitted).

[35]State's ex. 15, at 4.

[36]This minimum was required by the version of NRS 213.1099 in effect at the time of Cavanaugh's trial. See 1981 Nev. Stat., ch. 450, § 1, at 871-72.

raising this claim before, he offers the affidavit by the juror regarding the jury's deliberations. This information does not provide good cause. He could have made this claim in earlier proceedings based on the alleged defectiveness of the instructions themselves. Moreover, a juror cannot impeach her own verdict in this manner.

NRS 50.065(2) provides:

> Upon an inquiry into the validity of a verdict or indictment:
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> (a) A juror shall not testify concerning the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith.
>
> (b) The affidavit or evidence of any statement by a juror indicating an effect of this kind is inadmissible for any purpose.

This statute allows "juror testimony regarding objective facts, or overt conduct, which constitutes juror misconduct,"[37] but it forbids evidence, like the affidavit in question, regarding the jurors' mental processes during their deliberations.

Cavanaugh contends that the State waived this challenge to the affidavit by not asserting it in the district court. However, the statute is mandatory. We conclude that it serves the interest of the public in stable verdicts and that a party cannot waive its provisions.[38] The affidavit is simply inadmissible under NRS 50.065(2).

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[37]Barker v. State, 95 Nev. 309, 312, 594 P.2d 719, 720 (1979).

[38]See Martinez v. Johnson, 61 Nev. 125, 131-32, 119 P.2d 880, 883 (1941) (explaining that despite the general rule that a person may waive

continued on next page . . .

The district court also manifestly abused its discretion in rejecting the State's claim of laches as "perfunctory." Cavanaugh filed his latest post-conviction petition nearly fifteen years after this court decided his direct appeal. Pursuant to NRS 34.800(2), any such period longer than five years "creates a rebuttable presumption of prejudice to the State." If, as here, the State pleads laches and moves to dismiss a habeas petition, "[t]he petitioner must be given an opportunity to respond to the allegations in the pleading before a ruling on the motion is made."[39] Thus, in this case prejudice to the State is presumed, and Cavanaugh has the burden to rebut that presumption. The district court, however, reversed that burden, stating: "Other than raising a statutory presumption of prejudice, the state has not shown that it is prejudiced in its ability to retry Cavanaugh or to defend the petition, and this court finds that it is not so prejudiced."[40] The district court also implied that the State was not prejudiced because it "has had notice of Cavanaugh's remaining claims all along, in that the claims have not substantially changed at any time during the state court proceedings."[41] Even aside from the fact that some of Cavanaugh's claims are new, this basis for the district court's decision has no force. Reraising the same claims is actually reason to dismiss a

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the benefit of a statutory provision, the benefit of a statute designed to conserve the public interest is not waivable).

[39]NRS 34.800(2).

[40]State's ex. 15, at 4.

[41]Id.

petition,[42] while new claims are not the primary problem that comes with delay. As this court has explained:

> The lengthy passage of time between conviction and a subsequent challenge is a factor which by itself unduly works to the advantage of a felon belatedly seeking relief from conviction. Memories of the crime may diminish and become attenuated. The facts and circumstances of the offense may be impossible to reconstruct.[43]

Here, Cavanaugh failed to effectively respond to the presumption of prejudice to the State.

We have also considered directly the assertions of good cause made in Cavanaugh's habeas petition and conclude that they too fail to provide a basis to overcome the procedural bars. His reason for raising grounds presented before is that the federal court "concludes that the . . . grounds . . . were not exhausted in the state courts."[44] He offers the same explanation for filing his petition after expiration of the one-year limit set forth in NRS 34.726(1).[45] However, Cavanaugh's failure to exhaust his claims in state court for purposes of federal habeas review does not constitute good cause for raising untimely, repeated, or, for that matter, new claims. If it did, it would effectively obliterate the requirement of good cause.

His petition states the following reasons for failing to present claims in earlier proceedings: ineffective assistance of counsel on direct

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[42]See NRS 34.810(2).

[43]Groesbeck, 100 Nev. at 260, 679 P.2d at 1269.

[44]State's ex. 1, at 19.

[45]Id. at 22.

appeal and in earlier state post-conviction proceedings, the state courts' refusal to consider all of the issues presented in his post-conviction petitions, the failure of the state court to hold an evidentiary hearing on his petition for post-conviction relief, and the state court's denial of his motions for continuance and investigative funding.[46] These reasons also fail to articulate good cause. They are largely conclusory and fail to plead specific supporting facts. Cavanaugh does not explain why he could not raise his claims of ineffective assistance of counsel before. He does not identify any issues that the state courts allegedly refused to consider. His own pleadings below indicate that the district court held a hearing on his petition for post-conviction relief but that his counsel presented no evidence.[47] And even though ground twenty-six of his petition alleges that the district court improperly denied his motions for continuance and investigative funding, he never explains how the denials were improper and provide good cause for raising any new claims.[48]

Cavanaugh also makes the novel assertion that several of his claims "should be deemed to have been presented" to this court on direct appeal pursuant to NRS 177.055.[49] He provides no argument, but apparently assumes that the statute obliges this court to ascertain and consider every claim that could conceivably be raised against a death sentence, even if the capital appellant does not present them. The statute

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[46]Id. at 20-21.

[47]See State's ex. 3 (Cavanaugh's "Response in Support of Petition for Writ of Habeas Corpus (Post-Conviction)"), at 2.

[48]State's ex. 1, at 75-78.

[49]Id., at 21.

is not this broad. NRS 177.055(2) requires mandatory review of a death sentence by this court in regard to only three questions:

> (b) Whether the evidence supports the finding of an aggravating circumstance or circumstances;
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> (c) Whether the sentence of death was imposed under the influence of passion, prejudice or any arbitrary factor; and
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> (d) Whether the sentence of death is excessive, considering both the crime and the defendant.

And even if any claims purportedly fall within these areas of mandatory review, Cavanaugh must still provide good cause for his own failure to raise them earlier. He has not done so.

Finally, the district court concluded that Cavanaugh had established the prejudice necessary to excuse procedural default and was even "entitled to have his petition heard for reasons of the 'fundamental miscarriage of justice' and 'actual innocence' doctrines."[50] The order included no findings or explanation for this conclusion. Because Cavanaugh has demonstrated no good cause to overcome procedural default, it is not necessary to consider whether he has established prejudice in regard to any of his claims. Nevertheless, if he could demonstrate that failing to address a claim would result in a fundamental miscarriage of justice, he would be entitled to relief.[51] We see only one claim that warrants discussion of this possibility.

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[50]State's ex. 15, at 5.

[51]See Mazzan, 112 Nev. at 842, 921 P.2d at 922.

Ground fourteen of Cavanaugh's petition asserts that the aggravating circumstance of torture, depravity of mind, or mutilation of the victim is invalid because the jury did not receive an instruction properly narrowing the scope of this aggravator.[52] According to Cavanaugh, the jury was simply instructed that the murder could be aggravated if it "involved torture, depravity of mind, or the mutilation of the victim."[53] Cavanaugh is correct that this instruction was inadequate.

This court has recognized that under the United States Supreme Court's opinion in Godfrey v. Georgia,[54] the term "depravity of mind" fails to provide adequate guidance to jurors and therefore requires a limiting instruction.[55] This court therefore construed the relevant statute, former NRS 200.033(8),[56] to require torture, mutilation or other serious physical abuse "beyond the act of killing itself, as a qualifying requirement to an aggravating circumstance based in part upon depravity of mind."[57] Thus, the instruction given in this case failed to properly define the term

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[52]State's ex. 1, at 49-50.

[53]Id. at 49. The State does not dispute this factual allegation. See State's ex. 6 ("State's Opposition to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction))", at 31.

[54]446 U.S. 420 (1980) (plurality opinion).

[55]See, e.g., Smith v. State, 110 Nev. 1094, 1103-04, 881 P.2d 649, 655-56 (1994).

[56]The Legislature amended NRS 200.033(8) in 1995, deleting "depravity of mind" as an element. 1995 Nev. Stat., ch. 467, § 1, at 1491.

[57]Robins v. State, 106 Nev. 611, 629, 798 P.2d 558, 570 (1990).

"depravity of mind."[58] But the error led to no fundamental miscarriage of justice. The aggravating circumstance could be based on torture, mutilation, or depravity of mind. "Mutilate" means "to cut off or permanently destroy a limb or essential part of the body, or to cut off or alter radically so as to make imperfect, or other serious . . . physical abuse beyond the act of killing itself."[59] The evidence of mutilation was overwhelming: Cavanaugh cut out the vocal cords of the victim and cut off his hands and feet. Evidence indicated that he did the second act after the victim's death. However, the precise timing of these acts was not important since this court has held that "mutilation, whether it occurs before or after a victim's death, is an aggravating circumstance under NRS 200.033(8)."[60] Therefore, despite the failure to narrowly define the aggravator, we conclude that because mutilation unquestionably occurred in this case, the jury's finding of the aggravating circumstance did not cause actual prejudice, let alone any miscarriage of justice.

We conclude that Cavanaugh's petition and all of its claims are procedurally barred as untimely under NRS 34.726 and by laches under NRS 34.800. His claims are also barred under NRS 34.810 for lack of good cause for either raising them again or failing to raise them in earlier proceedings. To the extent that this court has determined in earlier appeals that any of his claims lack merit, we discern no reason to

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[58]See Smith, 110 Nev. at 1103-04, 881 P.2d at 655-56.

[59]See Vanisi v. State, 117 Nev. 330, 343, 22 P.3d 1164, 1173 (2001).

[60]Byford v. State, 116 Nev. 215, 241, 994 P.2d 700, 717 (2000).

reconsider those determinations,[61] and they constitute the law of the case. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court, first, to rescind its order concluding that Cavanaugh is entitled to an evidentiary hearing and, second, to enter an order dismissing Cavanaugh's post-conviction habeas petition because he failed to meet his burden of pleading specific facts that demonstrate good cause to overcome the procedural bars or that rebut the presumption of prejudice to the State.

_____, J.
Rose

_____, J.
Maupin

_____, J.
Douglas

cc: Hon. Michael A. Cherry, District Judge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Lionel Sawyer & Collins/Las Vegas
Clark County Clerk

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[61]See Pellegrini, 117 Nev. at 885, 34 P.3d at 535-36 ("[A] court of last resort has limited discretion to revisit the wisdom of its legal conclusions when it determines that further discussion is warranted.").