

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE ASHBY GRAVES,
Appellant,
vs.
GREG SMITH, WARDEN; AND THE
STATE OF NEVADA,
Respondents.

No. 60557

FILED

JAN 16 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE


This is an appeal from an order of the district court denying appellant Willie Ashby Graves' post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Charles M. McGee, Senior Judge.

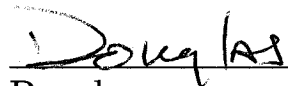
Graves contends that the district court abused its discretion by ending the evidentiary hearing, without taking any testimony from his witnesses, after finding that his petition was procedurally barred.¹ "A post-conviction habeas petitioner is entitled to an evidentiary hearing 'only if he supports his claims with specific factual allegations that if true would entitle him to relief.'" Means v. State, 120 Nev. 1001, 1016, 103 P.3d 25, 35 (2004) (quoting Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004)). Here, even if Graves' factual allegations were true, he was


¹To the extent that Graves also argues that a juror's inability to understand English during the trial resulted in manifest injustice sufficient to overcome the procedural bars, this argument was not raised below and we decline to consider it on appeal. See Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), overruled on other grounds by Means, 120 Nev. at 1012-13, 103 P.3d at 33.

not entitled to relief because his petition was procedurally barred and he had failed to demonstrate the good cause or actual innocence necessary to overcome the procedural bars. See NRS 34.726(1); NRS 34.810(3); State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003) (application of the procedural default rules to post-conviction habeas petitions is mandatory). Therefore, the district court properly determined that Graves was not entitled to an evidentiary hearing, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Chief Judge, Second Judicial District Court
Hon. Charles M. McGee, Senior Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk