

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DELJUAN MARKE GOODLOW,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 85000-COA

FILED

JUN 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Deljuan Marke Goodlow appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Goodlow argues that the district court erred by dismissing his January 24, 2022, petition without first conducting an evidentiary hearing. Goodlow reasserts two claims he previously raised on appeal from his judgment of conviction, *see Goodlow v. State*, No. 67527, 2016 WL 1091913 (Nev. March 17, 2016) (Order of Affirmance), and one claim that was addressed on the merits in his appeal from his first, timely postconviction petition for a writ of habeas corpus, *see Goodlow v. State*, No. 77624, 2020 WL 1660028 (Nev. March 27, 2020) (Order of Affirmance).

“The law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same.” *Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quotation marks omitted). This court will deviate from the law of the case only when a prior holding is “so

clearly erroneous that continued adherence to [it] would work a manifest injustice.” *Clem v. State*, 119 Nev. 615, 620, 81 P.3d 521, 525 (2003).

In addition, Goodlow filed his petition more than five years after issuance of the remittitur on direct appeal on April 12, 2016. Thus, Goodlow’s petition was untimely filed. *See* NRS 34.726(1). Moreover, Goodlow’s petition was successive because he had previously filed a postconviction petition for a writ of habeas corpus that was decided on the merits. *See* NRS 34.810(2). Goodlow’s petition was procedurally barred absent a demonstration of good cause and actual prejudice. *See* NRS 34.726(1); NRS 34.810(3).

In order to demonstrate cause for the delay under NRS 34.726(1), a petitioner must demonstrate that an impediment external to the defense prevented the petitioner from raising a claim in a timely filed petition. *See Rippo v. State*, 134 Nev. 411, 419, 423 P.3d 1084, 1095 (2018). Moreover, “[t]o demonstrate the cause required to excuse the procedural default of claims under NRS 34.810(1)(b) and (2), the petitioner must show that an impediment external to the defense prevented the petitioner from presenting the claims previously or warrants presenting them again.” *Id.* at 418, 423 P.3d at 1094 (internal quotation marks omitted). “A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of any default.” *Id.* at 419, 423 P.3d at 1095.

A petitioner must also demonstrate undue and actual prejudice sufficient to overcome the procedural bars, which implicates the merits of the underlying claim. *See id.* at 422, 425-26, 423 P.3d at 1097, 1099-1100. Accordingly, a petitioner has a “burden of demonstrating 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.” *Hogan v. Warden*, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (internal quotation marks omitted); *accord Harris v. State*, 133 Nev. 683, 691, 407 P.3d 348, 355 (Ct. App. 2017).

“In reviewing the district court’s application of the procedural default rules, we will give deference to its factual findings but will review the court’s application of the law to those facts de novo.” *Rippo*, 134 Nev. at 415-16, 423 P.3d at 1093 (internal quotation marks omitted). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific allegations that are not belied by the record and, if true, would entitle him to relief. *Rubio v. State*, 124 Nev. 1032, 1046, 194 P.3d 1224, 1233-34 (2008). However, a district court need not conduct an evidentiary hearing concerning claims that are procedurally barred when the petitioner cannot overcome the procedural bars. *Id.* at 1046 n.53, 194 P.3d at 1234 n.53.

First, Goodlow reasserts his claim that the trial court erred by denying his fair-cross-section challenge to the jury venire. Goodlow does not allege that an exception to the application of the law of the case applies to this claim. *Cf. Tien Fu Hsu v. County of Clark*, 123 Nev. 625, 632, 173 P.3d 724, 729-30 (2007); *Rippo*, 134 Nev. at 428, 423 P.3d at 1101. Accordingly, we conclude Goodlow fails to demonstrate that continued adherence to the law of the case would work a manifest injustice and, thus, he is not entitled to relief on this claim.

Moreover, even assuming law of the case does not bar review of this claim, Goodlow also must demonstrate good cause and prejudice sufficient to overcome the procedural bars. *See Rippo*, 134 Nev. at 428, 423

P.3d at 1101. Goodlow argues he had good cause to overcome the procedural bars because he recently obtained information concerning the racial makeup of the jury venire members summoned for service in Washoe County between 2017 and 2021. Goodlow contends that African Americans were underrepresented in the jury venire for his 2014 trial and that the data he obtained demonstrated that African Americans were underrepresented by the jury venires summoned for trials that occurred from 2017 to 2021. Goodlow therefore asserts that he has new support for his fair-cross-section challenge such that he met his burden to overcome application of the procedural bars.

Even assuming Goodlow's allegations regarding the jury venires in Washoe County from the time period between 2017 and 2021 are accurate, Goodlow does not meet his burden to demonstrate good cause because he does not explain how information from 2017 to 2021 was relevant to his 2014 trial.

Goodlow also fails to meet his burden to demonstrate undue or actual prejudice. Because the information upon which Goodlow bases his claim could not have been available to the trial court, Goodlow fails to show how the future information regarding jury venires could have affected the trial court's decision in 2014 to deny his fair-cross-section challenge. Moreover, Goodlow does not allege that any underrepresentation of African Americans in the 2014 jury venire occurred due to systemic exclusion of that group in the jury-selection process, and he thus fails to meet his burden to demonstrate that any underrepresentation of African Americans was inherent in the particular jury-selection process utilized by Washoe County. *See Valentine v. State*, 135 Nev. 463, 465, 454 P.3d 709, 713-14 (2019); *see*

also *Randolph v. People of the State of Cal.*, 380 F.3d 1133, 1141 (9th Cir. 2004) (“A showing that a jury venire underrepresents an identifiable group is, without more, an insufficient showing of systematic exclusion . . .”). Therefore, Goodlow does not meet his burden of demonstrating that an error stemming from the jury-selection process worked to his actual and substantial disadvantage.

For the foregoing reasons, Goodlow fails to overcome the law of the case or to demonstrate good cause and undue or actual prejudice sufficient to overcome the procedural bars concerning this claim. Accordingly, we conclude that the district court did not err by concluding that Goodlow was not entitled to relief based on this claim without first conducting an evidentiary hearing.

Second, Goodlow reasserts his claim that the trial court erred by denying his motion to sever his trial from his codefendant’s trial. Goodlow acknowledges he already raised the underlying claim but contends that he recently obtained statements from his codefendant which support his assertion that the trials should have been severed and that the new statements from his codefendant overcome application of the doctrine of law of the case.

Goodlow raised his underlying claim on direct appeal, and the Nevada Supreme Court concluded that the trial court did not err by denying his motion to sever. *See Goodlow*, No. 67527, 2016 WL 1091913. The Nevada Supreme Court noted that Goodlow testified at trial and “the crux of his defense was that the encounter with the victim started before he arrived and his codefendant fired the fatal shot.” *Id.* The Nevada Supreme Court also noted that Goodlow’s codefendant did not testify at trial but the

codefendant argued in closing that the codefendant was not guilty of second-degree murder. *Id.* Based on that information, the Nevada Supreme Court stated that Goodlow did not demonstrate that their defenses were antagonistic or “that the joint trial compromised a specific trial right or prevented the jury from making a reliable judgment regarding guilt or innocence.” *Id.*

In support of his argument that this claim should be reconsidered, Goodlow filed a declaration from an investigator that contains statements from Goodlow’s codefendant concerning the incident at issue. The incident at issue involved a shooting where Goodlow accepted a firearm from his codefendant and participated in an argument at a motel room door. During the ensuing argument, the occupant of the motel room was shot and killed. In the declaration, Goodlow’s codefendant states that Goodlow accepted the firearm and stayed at the motel room during the argument out of loyalty to the codefendant. The codefendant also states that the occupant of the motel room tried to grab Goodlow’s firearm and Goodlow engaged in a tussle over the firearm. Finally, the codefendant states that Goodlow’s firearm discharged a round and the codefendant subsequently shot the occupant of the room.

Goodlow does not demonstrate that the information contained within the declaration is “substantially new or different” from information already presented at trial such that the doctrine of the law of the case should not bar relitigation of Goodlow’s underlying claim. *See Rippo*, 134 Nev. at 427-28, 423 P.3d at 1101.

Moreover, even assuming the doctrine of the law of the case does not bar review of this claim, Goodlow must also demonstrate good

cause and actual prejudice sufficient to overcome the procedural bars. *See id.* at 428, 423 P.3d at 1101. And Goodlow does not demonstrate that an impediment external to the defense prevented him from presenting factual information obtained from his codefendant in his first, timely postconviction habeas petition. Therefore, Goodlow fails to demonstrate good cause sufficient to overcome the procedural bars.

In addition, the Nevada Supreme Court has already concluded that overwhelming evidence of Goodlow's guilt was presented at trial. *Goodlow*, No. 77624, 2020 WL 1660028. In light of this, Goodlow does not meet his burden of demonstrating that any failure to sever his trial from his codefendant's worked to his actual and substantial disadvantage.

For the foregoing reasons, Goodlow fails to overcome the law of the case or demonstrate good cause and undue or actual prejudice sufficient to overcome the procedural bars concerning this claim. Accordingly, we conclude that the district court did not err by concluding that Goodlow was not entitled to relief based on this claim without first conducting an evidentiary hearing.

Third, Goodlow reasserts his claim that his trial counsel was ineffective for failing to object to jury instruction no. 50 because that instruction contained a misstatement of law regarding the defense of withdrawal. Goodlow acknowledges he has already raised the underlying claim but contends that he recently obtained statements from his codefendant which support his assertion that he attempted to withdraw from the commission of the crime and that the new statements from his codefendant overcome application of the doctrine of law of the case.

Goodlow raised the underlying claim in his first, timely postconviction habeas petition, the district court denied that claim, and the Nevada Supreme Court affirmed the district court's decision. *Id.* The Nevada Supreme Court explained that Goodlow's claim lacked merit because instruction no. 50 correctly instructed the jury. *Id.* The Nevada Supreme Court also concluded that even assuming error, Goodlow was not entitled to relief in light of the evidence of his guilt presented at trial in the form of witness testimony and surveillance video. *Id.* As explained previously, Goodlow does not demonstrate that the information contained within the declaration is "substantially new or different" from information already presented at trial such that the doctrine of the law of the case should not bar relitigation of Goodlow's underlying claim. *See Rippo*, 134 Nev. at 427-28, 423 P.3d at 1101.

Moreover, even assuming law of the case does not bar review of this claim, Goodlow must also demonstrate good cause and actual prejudice sufficient to overcome the procedural bars. *See id.* at 428, 423 P.3d at 1101. And as explained previously, Goodlow does not demonstrate that an impediment external to the defense prevented him from presenting factual information obtained from his codefendant in his first, timely postconviction habeas petition. Therefore, Goodlow fails to demonstrate good cause sufficient to overcome the procedural bars.

In addition, the Nevada Supreme Court has already concluded that overwhelming evidence of Goodlow's guilt was presented at trial. *Goodlow*, No. 77624, 2020 WL 1660028. In light of this, Goodlow does not meet his burden of demonstrating that any failure by trial counsel to

challenge instruction no. 50 worked to his actual and substantial disadvantage.

For the foregoing reasons, Goodlow fails to overcome the law of the case or demonstrate good cause and undue or actual prejudice sufficient to overcome the procedural bars concerning this claim. Therefore, we conclude that the district court did not err by concluding that Goodlow was not entitled to relief based on this claim without first conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Scott N. Freeman, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk