IN THE SUPREME COURT OF THE STATE OF NEVADA

MONROE CHARLES, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39154

FILED

OCT 16 2002

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

ORDER OF AFFIRMANCE

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

The district court convicted appellant, pursuant to a jury verdict, of two counts of sexual assault. The district court sentenced appellant to two consecutive terms of life imprisonment with a total minimum parole eligibility of 20 years. This court dismissed appellant's appeal from his judgment of conviction.[1]

Appellant subsequently filed a timely, first post-conviction petition for a writ of habeas corpus in the district court. Counsel was appointed and filed a supplement. Following an evidentiary hearing, the district court denied the petition. This appeal followed.

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[1]Charles v. State, Docket No. 34481 (Order Dismissing Appeal, August 11, 2000).

Appellant contends that the district court erred in denying his petition because (1) his absence from a part of his trial violated his right to confront the witnesses against him and (2) he was incompetent during his trial. Preliminarily, we note that appellant initially presented his claims in the district court as allegations of ineffective assistance of trial and appellate counsel. As such, they were appropriately raised in his habeas petition.[2] However, on appeal from the district court's denial of the petition, appellant no longer argues ineffective assistance of trial or appellate counsel. Rather, he appears to assert that additional records provided in support of the instant petition render the district court's continued rejection of his confrontation clause and incompetence claims clearly erroneous.[3]

Absent a demonstration of good cause for failing to previously present these additional grounds for relief to the district court and prejudice resulting from the omission, appellant's claims are procedurally barred.[4] Appellant does not articulate cause for failing to previously

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[2]See Evans v. State, 117 Nev. ___, ___, 28 P.3d 498, 523 (2001) (explaining that "[c]laims of ineffective assistance of counsel are properly presented in a timely, first post-conviction petition for a writ of habeas corpus").

[3]The district court originally rejected these claims when they were presented by appellant's trial counsel in a motion for new trial argued at appellant's sentencing hearing.

[4]See NRS 34.810(1)(b), (3).

provide the district court with the additional documentation. Moreover, regardless of cause, appellant has failed to establish actual prejudice. Based upon our review of the supplemented record, we conclude that any additional documents do not demonstrate that the district court erred in denying appellant relief. For example, appellant provides a medical record stating that appellant was scheduled for a court appointment at 1:00 p.m. and that "he didn't make it." Appellant contends that this record demonstrates that he did "in fact tell VA medical staff that he needed to be in court." We conclude that this argument does not establish prejudice because this evidence demonstrates only that appellant informed the VA that he missed a court date; it does not support any inference that he wanted to attend his trial and tried to communicate to the district court his inability to do so. Also, although medical records indicate that appellant was hospitalized due to chest pains, they also characterize such symptoms as "non-reproducible." Moreover, one of the VA records lists "ETOH intox," i.e., alcohol intoxication, as the primary "diagnostic impression." Thus, the additional medical records belie appellant's claim that his absence from trial was involuntary. Similarly, we conclude that appellant was not prejudiced by the absence of his two psychiatric evaluations from the record on direct appeal. Appellant was not found incompetent until almost two months after the jury returned guilty verdicts. Thus, the evaluations finding appellant incompetent were of little value in ascertaining his competence approximately two months before their genesis.

Further, appellant argued on direct appeal (1) that he must be given a new trial because of his absence from part of the trial and (2) that the district court erred in failing to grant him a new trial because he was incompetent at the time of trial. This court rejected these claims. The doctrine of the law of the case bars further consideration of these issues.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Rose

_____, J.
Young

_____, J.
Agosti

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General/Carson City
Washoe County District Attorney
Scott W. Edwards
Washoe District Court Clerk

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[5]See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).