

CLERK OF THE NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
2413 State Capitol, P.O. Box 98910
Lincoln, Nebraska 68509-8910
(402) 471-3731

June 20, 2023

Juan L Leonor #54664
NE Correctional Youth Facility
2610 North 20th Street East
Omaha, NE 68110

IN CASE OF: S-23-000153, State v. Juan L Leonor
TRIAL COURT/ID: Douglas County District Court 149-834

The following filing: Motion Appellee for Summary Affirmance
Filed on 06/02/23
Filed by appellee State of Nebraska

Has been reviewed by the court and the following order entered:

We find no error in the district court's denial of Leonor's motion for postconviction relief. The State's Motion for Summary Affirmance is granted. Neb. Ct. R. App. P. § 2-107(B)(2).

Sincerely,
Wendy A. Wussow
Clerk



CLERK OF THE NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS
2413 State Capitol, P.O. Box 98910
Lincoln, Nebraska 68509-8910
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February 28, 2023

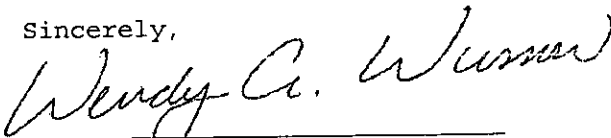
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Case Caption:	State v. Juan L Leonor
Appellate Case No:	S-23-0153
Trial Court:	Douglas County District Court
Trial Court No:	149834
Notice of Appeal filed on:	02/27/23
Record Preparation Date:	04/17/23
APPELLANT'S BRIEF IS DUE:	05/17/23

The above-captioned case has been filed in the Nebraska Supreme Court. Please record the Appellate Case number and use it on all pleadings and correspondence with our office. For additional information regarding brief due dates, see Neb. Ct. R. App. P. § 2-1109(A).

Pursuant to Neb. Ct. R. App. P. § 2-116(A)(3), in criminal cases where a presentence report may be material on appeal, the defendant, their counsel, or counsel for the State may request transmission of the presentence report to the Supreme Court Clerk.

Sincerely,



Wendy A. Wussow
Clerk

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

vs.

JUAN L LEONOR,

Defendant.

Case No. CR 10-9042.117

ORDER GRANTING MOTION TO REINSTATE APPEAL

This matter comes before the Court on Defendant, Juan Leonor's Motion to Reinstate Appeal filed April 11, 2022. A hearing was held February 10, 2023, via teleconferencing technology. The Court signed onto Zoom teleconferencing from the Douglas County District Court courthouse. Anthony Clowe, Deputy Douglas County Attorney, appeared on Zoom for the State of Nebraska. Juan Leonor appeared on Zoom pro se. During the hearing, the Court took judicial notice of Leonor's May 8, 2014, motion and the attached exhibits. The parties each presented oral argument to the Court. At the hearing, the Court made the finding that Leonor did not receive notice of the Court's October 3, 2012, order granting Leonor's motion to withdraw his motion to alter or amend.

The appropriate filing procedure when an appeal is lost due to official negligence is for the party seeking relief to file a motion in the lower court, seeking the ability to establish the basis for obtaining relief. *State v. Parnell*, 301 Neb. 774, 776, 919 N.W.2d 900, 902 (2018). Leonor has established that his direct appeal from the Court's April 6, 2012, order denying postconviction relief, was lost due to official negligence. Leonor did not receive a copy of the Court's order granting Leonor's motion to withdraw his timely motion to alter or amend the April 6, 2012 order.

Accordingly, the Court grants Leonor's motion to reinstate his appeal of that motion. Leonor will have 30 days from the date of entry of this order to perfect an appeal of this Court's April 6, 2012, denial of his 2012 motion for postconviction relief.

The Court finally notes that there appears to be a couple of filing discrepancies with respect to the 2012 motion for postconviction relief. Leonor's 2012 motion for postconviction relief is file stamped May 30, 2012, but the motion is dated March 9, 2012, and was ruled upon in April 2012. This suggests some type of inadvertent delay in the filing and affixing of the file stamp on that motion. Mr. Leonor also raised at the present hearing that he attached exhibits to his 2012 motion for postconviction relief but that images of those exhibits are not included in the filed copy. They are, however, referenced in the Court's April 2012 order denying his motion. The Court has reviewed Mr. Leonor's detailed 2012 motion for postconviction relief. Although no exhibits are attached to the filed copy, Mr. Leonor states in detail the contents of the proposed exhibits in the contents of his motion. Indeed, it is the contents of the verified motion in the context of the existing trial record that are the operative document in deciding whether to grant an evidentiary hearing. The statute provides no mechanism for the Court to receive outside exhibits unless an evidentiary hearing is granted. This motion for postconviction relief was denied without an evidentiary hearing, and accordingly no evidence other than the trial record and Mr. Leonor's allegations within his motion itself are pertinent to deciding this matter at the trial level or on appeal.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Leonor's motion to reinstate appeal from the Court's April 6, 2012, order denying his motion for postconviction relief is **granted**. Leonor has 30 days from the entry of this order to perfect a direct appeal from that order.

DATED this 10th day of February, 2023.

BY THE COURT:



MARLON A. POLK
DISTRICT JUDGE



JRT OF DOUGLAS COUNTY, NEBRASKA

THE STATE OF NEBRASKA,

Plaintiff,

vs.

JUAN LUIS LEONOR,

Defendant.

DOC. 149 PAGE 834

CR 10- 9042117

ORDER DENYING POSTCONVICTION
RELIEF AND MOTION TO RECALL

FILED
JOURNAL CLERK
2012 APR -6 AM 9:14
CLERK DISTRICT COURT

Defendant has filed several motions that are before the Court. Each is denied for the reasons stated below:

Factual and Procedural Background

Defendant was convicted after a jury trial of two counts of second degree murder and two counts of use of a deadly weapon to commit a felony. Defendant's convictions and sentences were affirmed by the Nebraska Supreme Court on February 1, 2002. *See State v. Leonor*, 263 Neb. 86, 638 N.W.2d 798 (2002). Defendant subsequently filed a motion for postconviction relief, which was denied by the Honorable Gerald Moran September 10, 2003. Defendant filed a successive motion for postconviction relief, which was again denied as being procedurally barred by the Honorable Gerald Moran October 2, 2008. Defendant has now filed a third motion for postconviction relief, along with motions for appointment of counsel and to recuse the postconviction judge.

Defendant's Motions

I. Successive motion for postconviction relief

Defendant's current motion makes several arguments based on ineffective assistance, due process violations, errors by the trial court and prosecutorial misconduct. The Nebraska

Supreme Court has explained the following with regard to successive motions for postconviction relief:

The Nebraska Postconviction Act, Neb.Rev.Stat. § 29-3001 et seq. (Reissue 2008), is available to a defendant to show that his or her conviction was obtained in violation of his or her constitutional rights. *State v. Marshall, supra*. However, the need for finality in the criminal process requires that a defendant bring all claims for relief at the first opportunity. *Id.* Therefore, an appellate court will not entertain a successive motion for postconviction relief unless the motion affirmatively shows on its face that the basis relied upon for relief was not available at the time the movant filed the prior motion. *Id.*

In the instant case, the allegations in Sims' second motion for postconviction relief involve ineffective assistance of counsel claims against his trial and appellate counsel as well as Sims' claim that there was insufficient evidence to convict him. Sims previously raised, and this court rejected on direct appeal, Sims' claim that there was insufficient evidence to convict him. **Further, Sims' claims of ineffective assistance of counsel were known or knowable to Sims at the time of his direct appeal and his first motion for postconviction relief.**

State v. Sims, 277 Neb. 192, 761 N.W.2d 527 (2009) (emphasis added). Each of Defendant's claims were clearly "knowable" to him at the time of his direct appeal or two prior postconviction motions. Thus, these claims are procedurally barred.

The only claim worthy of separate discussion is Defendant's first claim, which alleges actual innocence based on newly discovered evidence. Defendant relies on *State v. Lotter*, 278 Neb. 466, 771 N.W.2d 551 (2009), to support his claim of actual innocence in an effort to avoid a procedural bar or the three year limitation imposed by § 29-2103 for presenting newly discovered evidence. *Lotter*, however, did not recognize "actual innocence" as a cognizable claim in Nebraska and this Court is unwilling to do so either. *Lotter*, 278 Neb. at 482, 771 N.W.2d at 564. Even if the Court were to acknowledge such a claim, it would fail because Defendant has not established an issue of actual evidence through the exhibits attached to his motion. See *Lotter, supra* (holding that even if actual innocence were a cognizable claim, the

defendant had failed to present anything to establish a claim of actual innocence and refute the evidence adduced at trial). Here, Defendant has offered an affidavit that solely relies on hearsay and another from an individual who did not testify at trial. Thus, the Court finds that even if actual innocence were a cognizable claim, Defendant has failed to establish actual innocence to refute the evidence adduced at trial, the same evidence which the Nebraska Supreme Court found sufficient to affirm Defendant's conviction on appeal.

II. Motion for appointment of postconviction counsel

Defendant has also requested postconviction counsel, which is denied. States are not obligated to provide postconviction relief procedures; therefore, when they do, the Due Process Clause of the United States Constitution does not require states to supply an attorney. *State v. Stewart*, 242 Neb. 712, 719, 496 N.W. 2d 524, 529 (1993). The Nebraska Supreme Court has stated that when "the assigned errors in the postconviction petition before the district court contain no justiciable issue of law or fact, it is not an abuse of discretion to fail to appoint counsel for an indigent defendant. *State v. Gonzalez-Faguaga*, 266 Neb. 72, 662 N.W.2d 581 (2003). "When, however, the defendant's petition presents a justiciable issue to the district court for postconviction determination, an indigent defendant is entitled to counsel." *Id.*

III. Motion to Recuse

Defendant's motion to recuse requests recusal of the Honorable Gerald Moran, who presided over the trial and subsequent collateral attacks. Judge Moran has retired and therefore, this issue is moot and Defendant's request is overruled.

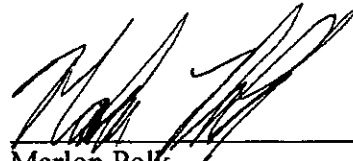
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's successive motion for postconviction relief is denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's motion for postconviction counsel is denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's motion to recuse is denied.

DATED this 5th day of April, 2012.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Marlon Polk', is written over a horizontal line.

Marlon Polk
District Court Judge

**Additional material
from this filing is
available in the
Clerk's Office.**