

IN THE SUPREME COURT OF THE STATE OF NEVADA

CURTIS L. DOWNING A/K/A CURTIS
LUNDY DOWNING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42905

FILED

AUG 23 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On December 4, 1995, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary, three counts of sexual assault with the use of a deadly weapon, and one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve six consecutive terms of life plus an additional consecutive forty years in the Nevada State Prison with the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on June 10, 1997.

¹Downing v. State, Docket No. 27734 (Order Dismissing Appeal, May 22, 1997).

On January 11, 1996, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On June 7, 1996, the district court denied the petition. This court dismissed appellant's subsequent appeal.²

On December 24, 1997, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On October 16, 1998, the district court denied the petition. This court affirmed the order of the district court on appeal.³

On September 5, 2003, appellant filed a third proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing the petition was untimely and successive. Moreover, the State specifically pleaded laches. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 5, 2004, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than six years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because

²Downing v. State, Docket No. 28466 (Order Dismissing Appeal, December 24, 1997).

³Downing v. State, Docket No. 33167 (Order of Affirmance, October 2, 2000).

⁴See NRS 34.726(1).

he had previously filed a post-conviction petition for a writ of habeas corpus.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁷

Appellant presented no cause or prejudice to excuse the procedural defects in his petition. Rather, appellant contended that his petition raised a constitutional claim pursuant to NRS 34.360 through NRS 34.680 and, therefore, it was not subject to the procedural requirements set forth in NRS 34.720 through NRS 34.830. This contention lacks merit.

Appellant's petition challenged the validity of and requested relief from the judgment of conviction. Accordingly, appellant's petition is subject to the procedural requirements set forth in NRS 34.720 through NRS 34.830. Because appellant failed to demonstrate good cause and prejudice to excuse his untimely and successive petition and failed to overcome the presumption of prejudice to the State, we conclude that the district court properly determined that his petition was procedurally barred.

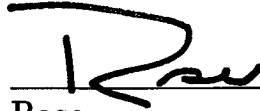
⁵See NRS 34.810(1)(b)(2); NRS 34.810(2).


⁶See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

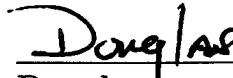
⁷See NRS 34.800(2).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Lee A. Gates, District Judge
Curtis L. Downing
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).