

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAMARR ROWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42909

FILED

SEP 01 2004

ORDER OF AFFIRMANCE

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

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

On September 16, 1999, the district court convicted Rowell, pursuant to a guilty plea, of burglary. The district court sentenced Rowell to serve a term of 120 months in the Nevada State Prison with a minimum parole eligibility of 48 months. This court dismissed Rowell's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹ Rowell unsuccessfully sought post-conviction relief.²

On November 12, 2003, Rowell filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Rowell subsequently filed three amended

¹Rowell v. State, Docket No. 37635 (Order Dismissing Appeal, May 8, 2001).

²Rowell v. State, Docket Nos. 36601, 36658, 37023 (Order of Affirmance and Dismissing Appeal, April 10, 2001); Rowell v. State, Docket No. 37749 (Order of Affirmance, December 12, 2001).

habeas corpus petitions.³ Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Rowell or to conduct an evidentiary hearing. On March 1, 2004, the district court denied Rowell's petition as untimely and successive. This appeal followed.

Rowell filed his petition more than four years after entry of the judgment of conviction. Thus, Rowell's petition was untimely filed.⁴ Moreover, Rowell's petition was successive because he had previously filed several post-conviction habeas corpus petitions.⁵ Rowell's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶

In an attempt to excuse his procedural defects, Rowell argued that he was deprived of a direct appeal without his consent due to the ineffective assistance of counsel. Rowell claimed that this amounted to a constitutional deprivation of the right to an attorney.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that Rowell failed to demonstrate good cause. A claim that a petitioner was deprived of a direct appeal does not constitute good cause to excuse an untimely and successive petition.⁷ Rowell's appeal deprivation claim could have been

³Rowell filed his amended petitions on November 21, 2003, December 1, 2003, and January 12, 2004.

⁴See NRS 34.726(1).

⁵See NRS 34.810(2).


⁶See NRS 34.726(1); NRS 34.810(3).


⁷See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).


raised in a timely petition, and he failed to demonstrate good cause for his failure to do so.⁸ Therefore, we affirm the order of the district court.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Rowell is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

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

⁸See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).