

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KEITH MARSHALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42929

FILED

AUG 27 2004

ORDER OF AFFIRMANCE

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

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

On September 13, 1983, the district court convicted Marshall, pursuant to a guilty plea, of burglary with the intent to commit a felony, two counts of attempted robbery with the use of a deadly weapon, battery with the use of a deadly weapon, and murder with the use of a deadly weapon. The district court sentenced Marshall to serve two consecutive terms of life in the Nevada State Prison and fixed, consecutive terms totaling 24 years. This court dismissed Marshall's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹

On December 29, 2003, Marshall filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that Marshall's petition was untimely

¹Marshall v. State, Docket No. 32760 (Order Dismissing Appeal, August 10, 1998).

filed and thus, procedurally barred. Moreover, the State specifically pleaded laches. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Marshall or to conduct an evidentiary hearing. On February 18, 2004, the district court denied Marshall's petition. This appeal followed.

Marshall filed his petition more than twenty years after entry of the judgment of conviction. Thus, Marshall's petition was untimely filed.² Marshall's petition was procedurally barred absent a demonstration of good cause and prejudice.³ Further, because the State specifically pleaded laches, Marshall was required to overcome the presumption of prejudice to the State.⁴

In an attempt to excuse his procedural defects, Marshall argued that his counsel was ineffective because he failed to inform Marshall of his right to appeal. Consequently, Marshall contended, he had no other avenue in which to address his claims other than a habeas corpus petition. We conclude Marshall has not established good cause to excuse his delay in filing his petition.⁵ Furthermore, Marshall has not overcome the presumption of prejudice to the State.

²See NRS 34.726(1).


³See id.

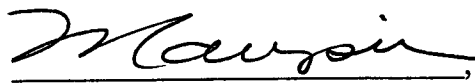
⁴See NRS 34.800(2).


⁵See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Marshall is not entitled to relief and that briefing and oral argument are unwarranted.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Rose

 _____, J.
Maupin

 _____, J.
Douglas

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

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).