

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE SANTOS MIRANDA,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 42961

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's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On May 6, 1994, the district court convicted appellant, pursuant to a jury verdict, of one count of sexual assault on a minor under fourteen years of age and two counts of lewdness on a minor.¹ The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years for sexual assault and two concurrent three-year terms for lewdness. This court dismissed

¹The district court subsequently entered an amended judgment of conviction on February 8, 2001, to specify the parole eligibility term for the sexual assault count.

appellant's appeal from his judgment of conviction and sentence.² The remittitur issued on August 13, 1996.

On June 4, 1997, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent appellant and counsel filed a supplement to the petition. The State opposed the petition. Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On March 15, 2001, the district court denied appellant's petition. This court affirmed the district court on appeal.³

On October 24, 2003, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State moved to dismiss the petition. 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 February 6, 2004, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than seven 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

²Miranda v. State, Docket No. 25984 (Order Dismissing Appeal, July 23, 1996).

³Miranda v. State, Docket No. 37541 (Order of Affirmance, March 29, 2002).

⁴See NRS 34.726(1).

because 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

In an attempt to excuse his procedural defects, appellant asserted that, on appeal from the district court's order denying his petition, his counsel in his previous post-conviction matter failed to raise several claims. Appellant argued that, due to this error, he is entitled to raise these issues in this petition and is not subject to the procedural bars of NRS chapter 34.

Appellant did not have the right to the effective assistance of counsel in the previous post-conviction matter.⁷ Consequently, appellant's excuse that his post-conviction counsel failed to raise and argue several claims on appeal from his previous post-conviction matter does not provide good cause to justify the filing of the instant successive and untimely petition.⁸ Thus, the district court did not err in concluding that appellant's petition was procedurally barred.

⁵See NRS 34.810(1)(b)(2), (2).


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


⁷McKague v. Warden, 112 Nev. 159, 164 n.4, 912 P.2d 255, 258 n.4 (1996) ("[i]t is clear that [appellant] has no constitutional right to effective counsel on appeal from the denial of his first post-conviction petition").

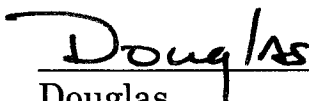
⁸See id. at 164-65, 912 P.2d at 258 (holding that "[w]here there is no right to counsel there can be no deprivation of effective assistance of counsel and hence, 'good cause' cannot be shown based on an
continued on next page . . .

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

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

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ineffectiveness of post-conviction counsel claim"); Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996).

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