

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTIONE JEAN,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 42973

FILED

AUG 27 2004

ORDER OF AFFIRMANCE

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

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

On May 22, 2003, the district court convicted Jean, pursuant to a guilty plea, of attempted murder with the use of a deadly weapon. The district court sentenced Jean to serve a term of 43 to 192 months in the Nevada State Prison, plus an equal and consecutive term for the use of a deadly weapon. Jean did not file a direct appeal.

On June 17, 2003, Jean filed a petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition, asserting that it was not properly verified pursuant to NRS 34.370. On August 5, 2003, the district court granted the State's motion to dismiss Jean's petition.¹

¹Because it was not decided on the merits, we conclude Jean's petition was dismissed without prejudice. See Sheriff v. Scalo, 96 Nev. *continued on next page . . .*

On August 28, 2003, Jean filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Jean or to conduct an evidentiary hearing. On January 5, 2004, the district court denied Jean's petition. This appeal followed.

In his petition, Jean challenged the imposition of the deadly weapon enhancement to his sentence. Specifically, Jean argued that the deadly weapon enhancement statute, NRS 193.165, was unconstitutional due to defects in its enactment. According to Jean, the alleged defects rendered the enhancement portion of his sentence unconstitutional and thus, null and void.

We conclude Jean's claim is without merit. The validity of NRS 193.165 was not affected by any alleged irregularities in the passage of Assembly Bill 234.² Moreover, we have previously upheld the constitutionality of NRS 193.165.³ Therefore, we affirm the order of the district court denying Jean's petition.

... continued

776, 616 P.2d 402 (1980) (holding that an unverified petition for a writ of habeas corpus is not cognizable in the district court).


²See State v. Beck, 25 Nev. 68, 79-81, 56 P. 1008, 1009-10 (1899) (holding that an enrolled bill, signed by the proper officers of the legislature, approved by the governor, and filed with the secretary of state, is conclusively presumed to have been regularly enacted).

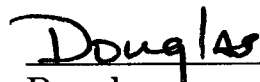
³See Woofter v. O'Donnell, 91 Nev. 756, 542 P.2d 1396 (1975).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Jean is not entitled to relief and that briefing and oral argument are unwarranted.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Kathy A. Hardcastle, District Judge
Antione Jean
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).