

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJARDI BATUCAN VIRAY,  
Appellant,  
vs.  
WARDEN, LOVELOCK  
CORRECTIONAL CENTER, CRAIG  
FARWELL,  
Respondent.

No. 43001

FILED

JUN 07 2004

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.

On October 6, 2003, the district court convicted appellant, pursuant to a jury verdict, of 6 six counts of lewdness with a minor under the age of fourteen years, 4 counts of sexual assault on a minor under the age of fourteen years, and 2 counts of preventing or dissuading a person from testifying or producing evidence. The district court imposed three consecutive sentences of life in the Nevada State Prison with the possibility of parole. The remainder of the terms were imposed to run concurrently. A direct appeal is currently pending in this court in Docket No. 42325.

Appellant filed a number of proper person post-conviction petitions for writs of habeas corpus.<sup>1</sup> On December 1, 2003, the district

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<sup>1</sup>Several of the petitions were filed prior to sentencing or entry of the judgment of conviction and while appellant was represented by counsel in  
*continued on next page . . .*

court denied the petitions on the ground that they were not in the proper form.

On December 2, 2003, and on December 26, 2003, appellant filed a post-conviction petition for a writ of habeas corpus and amended petition. The State opposed the petitions. On February 17, 2004, the district court denied appellant's petition. This appeal followed.

In his December petitions, appellant appeared to attempt to seek a review of the December 1, 2003 district court order denying his previously filed habeas corpus petitions. To the extent that appellant sought habeas corpus relief, we conclude that the district court did not err in denying relief. The district court properly exercised its discretion to refuse to reconsider its prior ruling.<sup>2</sup> We note that the district court's December 1, 2003 order denying relief because the petitions were not in the proper form was not a decision on the merits, and thus, the petitions were denied without prejudice. Appellant may file a post-conviction petition for a writ of habeas corpus, complying with the procedural requirements of NRS chapter 34, after the resolution of his direct appeal.

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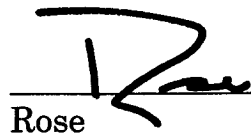
the district court proceedings. Appellant did not have permission to file supplemental documents. See NRS 34.750(5).


<sup>2</sup>See DCR 13(7) (providing that "[n]o motion once heard and disposed of shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties"); EDCR 7.12 (prohibiting multiple applications).

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.<sup>3</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, C.J.  
Shearing

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Douglas

cc: Hon. John S. McGroarty, District Judge  
Benjardi Batucan Viray  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>3</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).