

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES M. ELLIOTT,
Appellant,
vs.
WARDEN, SOUTHERN DESERT
CORRECTIONAL CENTER, SHERMAN
HATCHER,
Respondent.

No. 43018

FILED

SEP 17 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant James Elliot's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On July 10, 2003, the district court convicted Elliot, pursuant to a guilty plea, of one count each of indecent exposure and failure to register as a sex offender. The district court sentenced Elliot to serve two concurrent terms of 12 to 30 months in the Nevada State Prison. Elliot did not file a direct appeal.

On September 16, 2003, Elliot filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On

December 18, 2003, the district court denied Elliot's petition on the merits, and this court subsequently affirmed the order of the district court.¹

On December 12, 2003, Elliot filed a second 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 Elliot or to conduct an evidentiary hearing. On March 8, 2004, the district court denied Elliot's petition. This appeal followed.

Elliot's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.² As such, his petition was procedurally barred absent a demonstration of good cause and actual prejudice.³

Elliot argued that his procedural defect should be excused because he "recently discovered the evidence." However, Elliot failed to demonstrate that the claims he raised in the instant petition were not reasonably available at the time he filed his first post-conviction habeas petition.⁴ Further, Elliot did not establish that he would be unduly prejudiced by the denial of his petition because the claims he raised were

¹Elliot v. State, Docket No. 42574 (Order of Affirmance, June 28, 2004).

²See NRS 34.810(2).


³See NRS 34.810(3).


⁴See Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001).

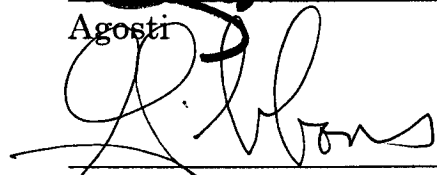
without merit. Consequently, the district court did not err in determining that Elliot's petition was procedurally barred.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Elliot is not entitled to relief and that briefing and oral argument are unwarranted.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Joseph T. Bonaventure, District Judge
James M. Elliott
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).