

IN THE SUPREME COURT OF THE STATE OF NEVADA.

LAMARR ROWELL,
Appellant,
vs.
WARDEN, WARM SPRINGS
CORRECTIONAL CENTER, ROBIN
BATES,
Respondent.

No. 43019

FILED

SEP 22 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. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On September 9, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary in district court case number C149775. The district court sentenced appellant to serve a term of eighteen to ninety-six months in the Nevada State Prison. This court dismissed appellant's untimely direct appeal for lack of jurisdiction.¹ Appellant unsuccessfully sought post-conviction relief from the judgment of conviction.²

On November 19, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court.

¹Rowell v. State, Docket No. 35959 (Order Dismissing Appeal, May 8, 2000).

²Rowell v. State, Docket Nos. 37836, 37838, 37839 (Order of Affirmance, December 14, 2001); Rowell v. State, Docket No. 37283 (Order of Affirmance, July 9, 2001).

Appellant amended the petition on November 21, 2003, December 26, 2003, and January 29, 2004. The State opposed the petition. On March 2, 2004, the district court denied the petition. This appeal followed.

Appellant filed his petition more than four years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Moreover, appellant's petition was successive and an abuse of the writ because he had previously filed several post-convictions petitions.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

In an attempt to excuse his procedural defects, appellant argued that he was deprived of a direct appeal without his consent due to the ineffective assistance of counsel. Appellant claimed that this amounted to an unconstitutional deprivation of the right to an attorney.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause. A claim that a petitioner was deprived of a direct appeal does not constitute good cause to excuse an untimely and successive petition.⁶ Appellant's appeal deprivation claim could have been raised in a timely petition, and appellant failed to demonstrate good cause

³See NRS 34.726(1).

⁴See NRS 34.810(2).

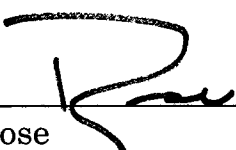
⁵See NRS 34.726(1); NRS 34.810(3).

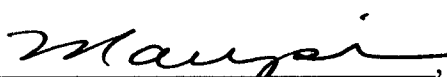
⁶See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

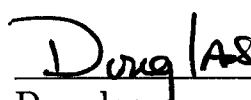
for his failure to do so.⁷ Therefore, we affirm the order of the district court.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Donald M. Mosley, District Judge
Lamarr Rowell
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁷See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.