

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM CALDWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43054

FILED

NOV 15 2004

ORDER OF AFFIRMANCE

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

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

On March 12, 1999, the district court convicted appellant, pursuant to an Alford¹ plea, of attempted sexual assault on a minor under 14 years of age. The district court sentenced appellant to serve a term of 17 years in the Nevada State Prison. The sentence was imposed to run consecutively to his federal sentence. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.²

On March 16, 2000, 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 appellant³ and counsel filed a

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²Caldwell v. State, Docket No. 35815 (Order Dismissing Appeal, April 12, 2000).

³See NRS 34.750.

supplement to the petition on September 12, 2000. The State filed an opposition to the petition and supplements to the opposition. Appellant filed a reply and supplements to the reply. Although the petition was untimely, the district court conducted an evidentiary hearing.⁴ On May 14, 2001, the district court denied appellant's petition on the merits. This court subsequently affirmed the order of the district court denying the petition.⁵ However, this court concluded that the petition was untimely and should have been denied on this basis.

On December 26, 2003, appellant 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 appellant or to conduct an evidentiary hearing. On March 2, 2004, the district court dismissed appellant's 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.⁶ Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.⁷ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁸

⁴See NRS 34.770.

⁵Caldwell v. State, Docket No. 38068 (Order of Affirmance, May 15, 2002).

⁶See NRS 34.726(1).


⁷See NRS 34.810(2).


⁸See NRS 34.726(1); NRS 34.810(3).

Appellant argued that his procedural defects should be excused due to newly discovered evidence. However, appellant failed to demonstrate that the claims he raised in the instant petition were not reasonably available within the time for filing a timely petition.⁹ Further, appellant did not establish that he would be unduly prejudiced by the denial of his petition because the claims he raised were without merit. Consequently, the district court did not err in determining that appellant's petition was procedurally barred.

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

⁹See Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001).

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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