

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIO CESAR NAVAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43207

JULIO CESAR NAVAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43208

FILED

JUL 14 2004

ORDER OF AFFIRMANCE

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

These are proper person appeals from orders of the district court denying appellant's petitions for writs of habeas corpus without prejudice.¹ Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Appellant filed proper person post-conviction petitions for writs of habeas corpus in district court case numbers CR030647 and CR022190. On April 5, 2004, the district court denied the petitions without prejudice. These appeals followed.

¹These matters were consolidated in a previous order issued by this court. See Navas v. State, Docket Nos. 43207, 43208 (Order Dismissing Appeals, May 27, 2004). The May 27, 2004 order was a partial dismissal and only dismissed the notices of appeals designating the motions to discharge attorney of record.

The district court declined to consider the petitions because appellant has direct appeals pending in this court from the judgments of convictions entered in the aforementioned district court cases. We conclude that the district court did not abuse its discretion in declining to consider the petitions at this time. Although the district court improperly concluded that it lacked jurisdiction to consider the petitions while the direct appeals were pending in this court, the district court may properly exercise its discretion to decline considering the merits of the petitions until after resolution of the direct appeals.² After the resolution of his direct appeals and within one year from the remittitur of the direct appeals, appellant may re-submit his petitions for consideration in the district court.³ The district court may exercise its discretion at that time to appoint post-conviction counsel.⁴

²See Bongiovi v. Bongiovi, 94 Nev. 321, 579 P.2d 1246 (1978) (holding that the district court retains jurisdiction over matters collateral to and independent from that part of case taken up on appeal); see also Sheriff v. Gleave, 104 Nev. 496, 761 P.2d 416 (1988) (holding that habeas corpus is an independent proceeding).

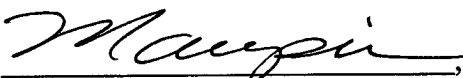
³We note that the successive procedural bar of NRS 34.810 would not apply to the petitions submitted after the direct appeal, and pursuant to this court's order, because the district court denied the petitions without prejudice. However, we note that appellant must re-submit his petitions in his district court cases within one year from the date this court issues the remittiturs in his direct appeals. See NRS 34.726(1).

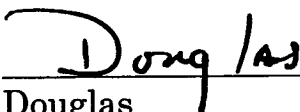
⁴See NRS 34.750(1). In denying his petitions, the district court concluded that because appellant had already been granted "in pauperis" status that "he would more likely than not be granted representation."

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Jerome Polaha, District Judge
Julio Cesar Navas
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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