

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNNY WAYNE COLLINS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43302

FILED

OCT 27 2004

ORDER OF AFFIRMANCE

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

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; Kathy A. Hardcastle, Judge.

On November 3, 1995, the district court convicted appellant, pursuant to a bench trial, of one count of first degree murder with the use of a deadly weapon and one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole and two consecutive terms of fifteen years. The latter terms were imposed to run concurrently with the former terms. This court dismissed appellant's appeal from his judgment of conviction.<sup>1</sup> The remittitur issued on February 10, 1998.

On October 13, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

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<sup>1</sup>Collins v. State, Docket No. 28155 (Order Dismissing Appeal, January 22, 1998).

State opposed the petition. On January 28, 1999, the district court denied the petition. This court affirmed the order of the district court on appeal.<sup>2</sup>

On March 4, 2004, appellant filed a 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 April 29, 2004, the district court denied appellant's petition.<sup>3</sup> This appeal followed.

Appellant filed his petition approximately eight and one-half years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>4</sup> Moreover, appellant's petition was successive and an abuse of the writ because he had previously filed a post-conviction petition for a writ of habeas corpus.<sup>5</sup> Appellant's petition

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<sup>2</sup>Collins v. State, Docket No. 33727 (Order of Affirmance, April 30, 2002).

<sup>3</sup>Appellant attempted to supplement his petition on April 23, 2004. However, because the supplement was filed after the district court's oral decision, this court declines to consider the claims raised in the supplement. See generally NRS 34.750(5) (providing that no further pleadings are permitted except by permission of the district court); State v. Haberstroh, 119 Nev. 173, 180-81, 69 P.3d 676, 681-82 (2003) (recognizing that NRS chapter 34 requires a demonstration of good cause on the face of the petition).

<sup>4</sup>See NRS 34.726(1).

<sup>5</sup>See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant indicated that he was raising new claims and re-raising claims previously decided in the prior proceedings.

was procedurally barred absent a demonstration of good cause and prejudice.<sup>6</sup>

In an attempt to excuse his procedural defects, appellant argued he had good cause to raise claims 1, 4-14, 16(a), claims that were already raised in prior proceedings, in order to give the State an opportunity to correct alleged constitutional deprivations. He claimed that he had good cause to raise claims 2, 3, 15, 16(b),(c), new grounds, because he received ineffective assistance of counsel, there was an impediment by the State and the claims were novel. He further argued that he had cause to excuse the delay because his first petition was timely filed, and he appeared to indicate that the second petition was required for exhaustion purposes. Finally, appellant claimed that he was actually innocent of the sentences he received because he was acquitted of the charges. He further claimed that even if he was found guilty of the murder charge the district court never specified the degree of murder.

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 to excuse the procedural defects. Filing a petition for purposes of exhaustion is not good cause. Appellant failed to demonstrate that ineffective assistance of counsel or state impediments prevented him from raising all of his claims in a timely petition. Appellant failed to demonstrate how his claims were novel such that his eight and one-half year delay should be excused. Finally, appellant's claim of actual innocence is belied by the record on appeal, and thus,

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<sup>6</sup>See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).


would not overcome application of the procedural bars.<sup>7</sup> 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.<sup>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>9</sup>

 \_\_\_\_\_, J.  
Becker

 \_\_\_\_\_, J.  
Agosti

 \_\_\_\_\_, J.  
Gibbons

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<sup>7</sup>See Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001); Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996). Specifically, we note that contrary to appellant's assertions, the district court, at the conclusion of the bench trial, found appellant "guilty of murder in the first degree . . . ." The district court further clarified that a deadly weapon was used. During sentencing, the district court again repeated that appellant had been found "guilty of the crime of first degree murder with use of a deadly weapon . . . ." The district court further found appellant guilty of a robbery with the use of a deadly weapon.

<sup>8</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>9</sup>We 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.

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