

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND, THE HONORABLE
JACKIE GLASS, DISTRICT JUDGE,
Respondents,
and,
JOHN ESPIREDION VALERIO,
Real Party in Interest.

No. 43460

FILED

JUN 25 2004

JANETTE L. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION

This is an original petition for a writ of prohibition or mandamus. The district court is considering the third post-conviction petition filed in state court by John Espiredion Valerio, the real party in interest. The State seeks extraordinary relief from this court, maintaining that the district court has disregarded the procedural bars applicable to the claims raised in Valerio's untimely and successive post-conviction habeas petition.

Valerio filed his instant petition for habeas relief in the district court in January 2004, more than 14 years after his direct appeal was decided. The State moved to dismiss the petition, asserting that it was procedurally barred. On April 27, 2004, the district court directed the State to respond to four of the substantive issues raised in Valerio's petition. When the counsel for the State asked if the district court was denying the State's motion to dismiss, the court responded that it would

rule on that issue at a later time. The State now petitions this court, asserting that the district court has disregarded Nevada's procedural bars.

This court may issue a writ of mandamus to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station or to control a manifest abuse of or arbitrary or capricious exercise of discretion.¹ It may issue a writ of prohibition to arrest the proceedings of any tribunal exercising judicial functions in excess of its jurisdiction.² This court considers whether judicial economy and sound judicial administration militate for or against issuing either writ.³ Mandamus and prohibition are extraordinary remedies, and the decision to entertain a petition lies within the discretion of this court.⁴ In this case, we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time.

The procedural rules pertinent to Valerio's petition appear to be the following. NRS 34.726(1) provides in part that absent a showing of good cause (including undue prejudice) for delay, a petition challenging a judgment or sentence must be filed within one year after this court issues

¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

²See NRS 34.320; Hickey v. District Court, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989).

³See State v. Babayan, 106 Nev. 155, 175-76, 787 P.2d 805, 819 (1990).

⁴Hickey, 105 Nev. at 731, 782 P.2d at 1338.

its remittitur on direct appeal.⁵ NRS 34.810(2) provides that a second or successive petition must be dismissed if “it fails to allege new or different grounds for relief and . . . the prior determination was on the merits or, if new and different grounds are alleged, . . . the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.”⁶ A petitioner can avoid dismissal if he meets the burden of pleading and proving specific facts that demonstrate good cause for his failure to present a claim before, or for presenting a claim again, and actual prejudice.⁷ Furthermore, NRS 34.800 provides that a court may dismiss a petition if delay in its filing improperly prejudices the State.

Application of these rules to post-conviction habeas petitions is mandatory.⁸ Therefore, the State is correct that the law requires the district court to determine whether procedural bars apply to Valerio's petition and that a refusal to make this determination would constitute an arbitrary and unreasonable exercise of discretion. However, the district court has not so refused; it has yet to rule on the issue of procedural bars.

This case is therefore unlike State v. District Court (Snow),⁹ which the State refers to in its petition. In Snow, the State moved the

⁵In this case, because NRS 34.726 was enacted after Valerio was convicted, the one-year deadline extends from January 1, 1993, the effective date of NRS 34.726. See Pellegrini v. State, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001).

⁶See also NRS 34.810(1)(b).

⁷NRS 34.810(3).

⁸State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003).

⁹Docket No. 37309 (Order Granting Petition, March 7, 2001).

district court to dismiss an untimely and successive habeas petition as procedurally barred. The district court denied the State's motion: it expressly refused to decide the applicability of the procedural bars and ordered an evidentiary hearing on the merits of Snow's claims. After the State petitioned this court for a writ of mandamus, we granted the writ. But contrary to the State's assertion, we did not order the district court to dismiss Snow's petition. Rather, we directed the court to comply with the pertinent law and decide the applicability of the procedural bars before determining whether to reach the merits of Snow's claims.

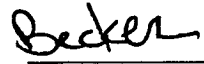
This case also differs from State v. District Court (Cavanaugh).¹⁰ In Cavanaugh, the State unsuccessfully moved the district court to dismiss an untimely and successive habeas petition as procedurally barred. Finding that Cavanaugh had demonstrated good cause and prejudice to overcome the procedural bars, the district court ordered an evidentiary hearing on the merits of his claims. Thus, the issue of procedural bars had been fully considered and decided by the district court when the State petitioned this court for mandamus relief. We granted that relief, in part because "the district court's finding that Cavanaugh had established good cause was without basis and a manifest abuse of its discretion."

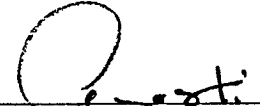
Here, the district court has yet to render a decision on the question of procedural bars, nor has it ordered an evidentiary hearing on the substance of Valerio's claims. It has simply directed the State to brief it on the substance of some of those claims, and we recognize that

¹⁰Docket No. 41993 (Order Granting Petition, April 28, 2004).

consideration of the substance of a claim is pertinent to determining whether a petitioner has established the prejudice needed to overcome a procedural bar. Accordingly, we

ORDER the petition DENIED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Federal Public Defender
Clark County Clerk