

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDIE SANCHEZ, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43536

FILED

NOV 04 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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; Lee A. Gates, Judge.

On October 3, 1988, the district court convicted appellant, pursuant to a guilty plea, of two counts of use of a minor in the production of pornography. The district court sentenced appellant to serve a term of six years in the Nevada State Prison for the first count and a concurrent term of life with the possibility of parole after five years for the second count. No direct appeal was taken.

On March 22, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State moved to dismiss the petition and appellant filed a response. 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 June 3, 2004, the district court dismissed appellant's petition as procedurally barred. This appeal followed.

In his petition, appellant claimed that the State violated his plea agreement and subjected him to double jeopardy by applying NRS

213.1214 to him and requiring him to be certified by a psychological panel ("psych panel") before he can be released on parole. Appellant further claimed that his plea was unknowingly, involuntarily and unintelligently entered because NRS 213.1214 did not exist in 1988 when he entered his plea. Appellant requested that he be permitted to see the Parole Board without any special conditions, i.e., without having to be certified by a psych panel.

Appellant filed his petition more than 15 years after entry of the judgment of conviction. To the extent that appellant's petition challenged the validity of his conviction, appellant's petition was untimely filed.¹ Appellant's petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.²

In an attempt to demonstrate good cause for the delay, appellant argued that he could not have raised the issue earlier.³ We note, however, that NRS 213.1214 was enacted in 1997 and was first applied to appellant in 1998. Appellant has failed to demonstrate good cause for the delay in filing his petition. Accordingly, we conclude that the district court did not err in dismissing his petition as procedurally barred.

¹See NRS 34.726(1).


²See id.

³Appellant asserted that he previously petitioned for relief from the psych panel requirement in the First Judicial District Court and that relief was not denied until 2003. Such a filing would have made the instant petition successive as well as untimely, and, therefore, also subject to the procedural bars in NRS 34.810(2), (3). Appellant failed to demonstrate good cause to excuse the filing of a successive petition. See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).


To the extent that appellant challenged the legality of his confinement, we conclude that appellant's claims lack merit. Requiring appellant to face a psych panel, not required by Nevada law in 1988, does not constitute an additional punishment.⁴ Further, appellant is not being subjected to a new trial for the same offense.

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.
Becker

 _____, J.
Agosti

 _____, J.
Gibbons

⁴See Land v. Lawrence, 815 F. Supp. 1351 (D. Nev. 1993) (holding that the application of a new statute enacted after defendant was convicted of attempted sexual assault which added that offense to those requiring persons seeking parole to appear before a psych panel did not violate the ex post facto clause); see also California Dept. of Corrections v. Morales, 514 U.S. 499 (1995) (holding that the application of an amendment authorizing the deferral of subsequent parole suitability hearings did not increase the punishment attached to respondent's crime).

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

cc: Hon. Lee A. Gates, District Judge
Eddie Sanchez Jr.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk