

IN THE SUPREME COURT OF THE STATE OF NEVADA

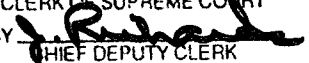
FREDERICK LEE STEESE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43553

FILED

NOV 24 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

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

On April 23, 1996, the district court convicted Steese, pursuant to a jury verdict, of murder with the use of a deadly weapon, robbery with the use of a deadly weapon, burglary and grand larceny auto. The district court sentenced Steese, pursuant to a stipulated sentence agreement, to a life term in the Nevada State Prison without the possibility of parole for the murder conviction, plus an equal and consecutive term for the deadly weapon enhancement. The district court also sentenced Steese to several fixed consecutive and concurrent terms for the robbery, burglary and grand larceny convictions. This court

affirmed Steese's judgment of conviction and sentence on appeal.¹ The remittitur issued on June 9, 1998.

On October 28, 1999, Steese filed a proper person post-conviction petition for a writ of habeas corpus in the district court.² On December 16, 1999, the district court denied Steese's petition, and Steese appealed. This court issued an order affirming in part, reversing in part and remanding for an evidentiary hearing on the sole issue of whether Steese was adequately informed concerning his options under the sentencing stipulation.³ Following an evidentiary hearing, the district court denied Steese's petition on September 30, 2003. No subsequent appeal was taken.

On February 13, 2004, Steese 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 Steese or to conduct

¹Steese v. State, 114 Nev. 479, 960 P.2d 321 (1998).

²Steese had previously filed a proper person post-conviction petition for a writ of habeas corpus on May 21, 1999. The State opposed the petition on the grounds that it failed to comply with the format required pursuant to NRS 34.735, and on its merits. On July 26, 1999, Steese filed a motion to amend his habeas petition to correct errors. On September 7, 1999, the district court granted Steese additional time to re-file his petition.

³Steese v. State, Docket No. 35404 (Order Affirming in Part, Reversing in Part and Remanding, January 21, 2003).

an evidentiary hearing. On June 3, 2004, the district court denied Steese's petition. This appeal followed.

Steese filed his petition more than five years after this court issued the remittitur from his direct appeal. Thus, Steese's petition was untimely filed.⁴ Moreover, Steese's petition was successive because he had previously filed a habeas corpus petition.⁵ Steese's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶

In an attempt to excuse his procedural defects, Steese argued that he recently received his complete case file and discovered evidence of actual innocence. However, Steese failed to demonstrate that the proposed evidence was not known to him at the time he filed his previous petition⁷ or that such evidence supported his claim of actual innocence.⁸ Based upon our review of the record on appeal, we conclude that Steese did not establish good cause for the untimely filing of his petition. Therefore, the district court did not err in denying Steese's petition.

⁴See NRS 34.726(1).


⁵See NRS 34.810(1)(b)(2); NRS 34.810(2).


⁶See NRS 34.726(1); NRS 34.810(3).


⁷See Hathaway v. State, 119 Nev. 248, 253, 71 P.3d 503, 506 (2003); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

⁸See Calderon v. Thompson, 523 U.S. 538, 559 (1998).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Steese is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

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

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).