

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER ANTHONY JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43554

FILED

MAR 29 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court denying appellant Christopher Anthony Jones's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On July 1, 1996, the district court convicted Jones, pursuant to a jury verdict, of first degree murder with the use of a deadly weapon. Jones entered into a stipulation waiving his right to a separate penalty hearing and waiving his right to appeal. Consistent with the stipulation, the district court sentenced Jones to a life term in the Nevada State Prison with the possibility of parole, plus an equal and consecutive sentence for the deadly weapon enhancement. No direct appeal was taken.

On May 14, 1997, Jones filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Shortly before filing his habeas petition, Jones filed a motion to withdraw his sentencing

stipulation. On June 12, 1997, the district court denied Jones's petition and motion. This court dismissed Jones's appeal.¹

On November 19, 2003, Jones filed a second proper person post-conviction petition for a writ of habeas corpus. The district court concluded that Jones demonstrated good cause to consider his successive petition because the district court had not properly considered Jones's first petition. On June 11, 2004, the district court denied Jones's second petition. This appeal followed.

We conclude the district court erred in finding good cause for the filing of Jones's second petition. The basis for the district court's finding was not clear, but it is clear that the district court did not consider whether Jones demonstrated good cause for the untimely filing of this petition.² This court dismissed his appeal from his first petition in 2000. Yet Jones waited more than three years to file his second petition. Based on the record, we conclude that Jones failed to demonstrate good cause for his lengthy delay in filing his second petition.

Moreover, we conclude that Jones also failed to demonstrate prejudice to overcome applicable procedural bars.³ First, Jones argues that his waiver of his right to appeal was involuntary because: he did not

¹Jones v. State, Docket No. 30756 (Order Dismissing Appeal, September 11, 2000).

²See NRS 34.726(1).

³See NRS 34.726(1)(b); NRS 34.810(1)(b)-(3).

understand the scope of the waiver, his counsel misadvised him concerning the merits of an appeal, and the district court inadequately canvassed him regarding the waiver. However, Jones acknowledged that he had discussed the waiver with counsel, that he understood the consequences of the waiver, and that he was forgoing his right to appeal to secure a life sentence with the possibility of parole. Considering the entire waiver canvass, we conclude that the district court correctly found the waiver to be valid and that Jones fails to demonstrate prejudice with this claim.

Jones contends, second, that comments made by the prosecutor during closing argument constituted prosecutorial misconduct and, third, that his counsel was ineffective for failing to object to most of these comments. Even assuming that the challenged comments were improper, such prosecutorial misconduct may constitute harmless error when there is overwhelming evidence of guilt.⁴ Here, the record reveals overwhelming evidence of Jones's guilt. Consequently, we conclude that Jones fails to establish that he was prejudiced.

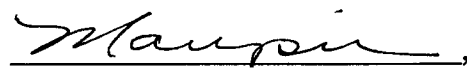
Lastly, Jones claims that his counsel was ineffective for failing to file a direct appeal and raise numerous issues. However, as discussed above, the record substantiates the district court's determination that

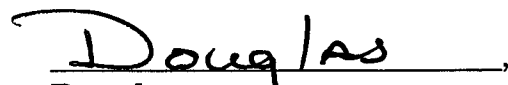
⁴See King v. State, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000); Pellegrini v. State, 104 Nev. 625, 628-29, 764 P.2d 484, 486-87 (1988).

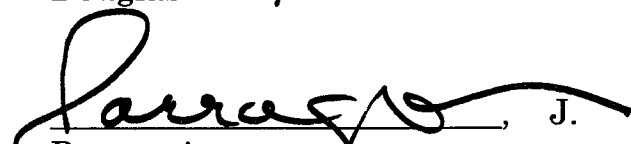
Jones validly waived his right to appeal. Therefore, we conclude that Jones fails to demonstrate any prejudice.

Having reviewed the record on appeal and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

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