

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN BROOKS A/K/A RALPH KEVIN
CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43621

FILED

NOV 03 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Kevin Brooks' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On September 21, 1990, the district court convicted Brooks, pursuant to a jury verdict, of two counts of burglary. The district court adjudicated Brooks a habitual criminal and sentenced him to serve two concurrent life terms in the Nevada State Prison without the possibility of parole. This court dismissed Brooks' appeal from his judgment of conviction and sentence.¹ The remittitur issued on January 8, 1992. Brooks unsuccessfully sought post-conviction relief.²

¹Brooks v. State, Docket No. 21722 (Order Dismissing Appeal, December 20, 1991).

²Brooks v. State, Docket No. 26131 (Order Dismissing Appeal, November 9, 1994); Brooks v. State, Docket No. 34575 (Order of Affirmance, February 22, 2001); Brooks v. State, Docket No. 40941 (Order of Affirmance, January 28, 2004). We issued an order of remand in one of Brooks' appeals because the district court erred in denying his petition for

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On March 31, 2004, Brooks filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition and specifically pleaded laches. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Brooks or to conduct an evidentiary hearing. On, June 28, 2004, the district court denied Brooks' petition. This appeal followed.

Brooks filed his petition more than 12 years after this court issued the remittitur from his direct appeal. Thus, Brooks' petition was untimely filed.³ Moreover, Brooks' petition was successive because he had previously filed three habeas corpus petitions.⁴ Brooks' petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ Further, because the State specifically pleaded laches, Brooks was required to overcome the presumption of prejudice to the State.⁶

Brooks neglected to adequately explain why he waited more than 12 years after his direct appeal was resolved to file his petition. Moreover, Brooks previously pursued post-conviction relief and failed to explain why he did not present his claim prior to the filing of the instant petition. Additionally, Brooks' claim that the justice court lacked jurisdiction to conduct a preliminary hearing was previously considered

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a writ of habeas corpus due to his pending direct appeal. Brooks v. State, Docket No. 22285 (Order of Remand, September 30, 1991).

³See NRS 34.726(1).

⁴See NRS 34.810(1)(b)(2); NRS 34.810(2).

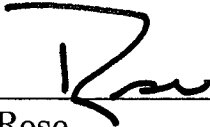
⁵See NRS 34.726(1); NRS 34.810(3).

⁶See NRS 34.800(2).


and rejected by this court.⁷ Finally, Brooks failed to rebut the presumption of prejudice to the State. Accordingly, we affirm the order of the district court.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Brooks is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Nancy M. Saitta, District Judge
Kevin Brooks
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁷See Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).