

IN THE SUPREME COURT OF THE STATE OF NEVADA


ALLAN FRED ALTERGOTT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43725

FILED

NOV 29 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 Allan Fred Altergott's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On August 27, 1999, the district court convicted Altergott, pursuant to a jury verdict, of conspiracy to commit robbery, burglary while in possession of a firearm, robbery with the use of a deadly weapon, sexual assault with a deadly weapon, and first-degree kidnapping with the use of a deadly weapon. The district court sentenced Altergott to serve four consecutive life terms in the Nevada State Prison with the possibility of parole for the sexual assault and first-degree kidnapping convictions, enhanced for the use of a deadly weapon. The district court also sentenced Altergott to multiple concurrent fixed terms for the remaining convictions. This court dismissed Altergott's appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on September 6, 2000.

---

<sup>1</sup>Altergott v. State, Docket No. 34802 (Order Dismissing Appeal, August 11, 2000).

On June 12, 2001, Altergott filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On August 21, 2001, the district court denied Altergott's petition. This court affirmed the district court's order denying Altergott's petition.<sup>2</sup>

On April 26, 2004, Altergott 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 Altergott or to conduct an evidentiary hearing. On June 29, 2004, the district court denied Altergott's petition as untimely filed and successive. This appeal followed.

Altergott filed his petition more than three years after this court issued the remittitur from his direct appeal. Thus, Altergott's petition was untimely filed.<sup>3</sup> Moreover, Altergott's petition was successive because he had previously filed a post-conviction habeas petition.<sup>4</sup> Altergott's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>5</sup>

To establish good cause, Altergott claimed that his petition was timely filed. However, Altergott's claim is belied by the record.<sup>6</sup>

---

<sup>2</sup>Altergott v. State, Docket No. 38474 (Order of Affirmance, September 30, 2002).

<sup>3</sup>See NRS 34.726(1).

<sup>4</sup>See NRS 34.810(1)(b)(2); NRS 34.810(2).

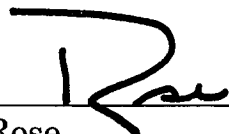
<sup>5</sup>See NRS 34.726(1); NRS 34.810(3).

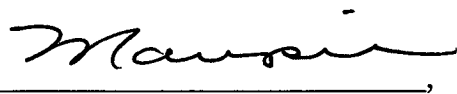
<sup>6</sup>See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

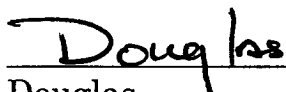
Additionally, several of Altergott's claims were considered and rejected by this court in our review of Altergott's June 12, 2001, petition. Altergott failed to explain why his remaining claims were not raised in his previous petition. Based upon our review of the record on appeal, we conclude Altergott failed to demonstrate good cause to excuse his procedural defaults.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Altergott is not entitled to relief and that briefing and oral argument are unwarranted.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

---

<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>8</sup>We have reviewed Altergott's proper person motion for enlargement of time submitted to the clerk of this court in this matter, and we conclude that no relief based upon his submission is warranted.

cc: Hon. John S. McGroarty, District Judge  
Allan Fred Altergott  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk