

IN THE SUPREME COURT OF THE STATE OF NEVADA

DALE KING GULBRANSEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43808

FILED

JUN 20 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT

THE JUDGMENT

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

On October 27, 1995, the district court convicted Gulbransen, pursuant to a jury verdict, of two counts of sexual assault on a minor under 14 years of age. The district court sentenced him to serve two concurrent life terms in the Nevada State Prison. This court dismissed Gulbransen's appeal from his judgment of conviction and sentence.¹ The remittitur issued on February 19, 1998.

On October 12, 1998, Gulbransen filed a post-conviction petition for a writ of habeas corpus in the district court, which denied the

¹Gulbransen v. State, Docket No. 27311 (Order Dismissing Appeal, January 30, 1997).

petition on January 19, 1999. This court affirmed the district court's decision on appeal.²

On February 3, 2004, Gulbransen filed a second post-conviction habeas petition in the district court. The State sought to dismiss the petition, arguing that it was untimely filed and successive. Additionally, the State specifically pleaded laches. The district court denied Gulbransen's petition on May 28, 2004. This appeal followed.

Gulbransen filed his petition approximately six years after this court issued the remittitur from his direct appeal. Thus, Gulbransen's petition was untimely filed.³ Moreover, his petition was successive because he had previously filed a post-conviction habeas petition in the district court.⁴ Further, because the State specifically pleaded laches, Gulbransen was required to overcome the presumption of prejudice to the State.⁵

Gulbransen's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶ "[T]he good cause necessary to overcome a procedural bar must be some impediment external to the

²Gulbransen v. State, Docket No. 33632 (Order of Affirmance, November 14, 2000).

³See NRS 34.726(1).

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

⁵See NRS 34.800(2).

⁶See NRS 34.726(1); NRS 34.810(3).

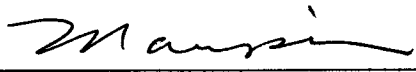
defense."⁷ Gulbransen argued that his procedural bars should be excused due to newly discovered evidence. Specifically, he alleges that several jurors overheard information that a State witness had observed him masturbating with a broomstick handle in his garage. Gulbransen contends that the jury's exposure to this information, whether true or not, prejudiced him. However, it appears from the record Gulbransen submitted on appeal that he was aware of this new evidence at least by April 2002, yet he waited almost two years to file his second habeas petition. Moreover, the documentation Gulbransen submitted to substantiate his claim is at best contradictory, and therefore we conclude that Gulbransen fails to demonstrate that the alleged new evidence prejudiced him.⁸ Finally, we conclude that Gulbransen fails to overcome the presumption of prejudice to the State.

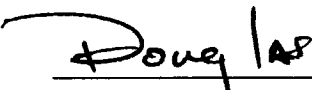
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that the district court did not err in denying Gulbransen's petition. However, in our review of this appeal, we discovered a clerical error in the judgment. The judgment reflected that Gulbransen filed his habeas petition in proper person when in fact counsel represented him. Therefore, we remand this matter to the district court for correction of the judgment. Accordingly, we

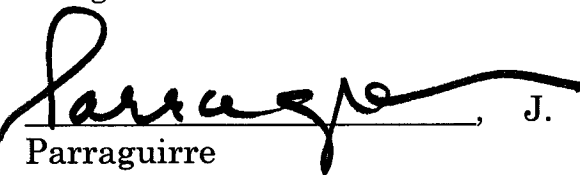
⁷Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998).

⁸See generally Hennie v. State, 114 Nev. 1285, 1289-90, 968 P.2d 761, 764, (1998); Funches v. State, 113 Nev. 916, 923-24, 944 P.2d 775, 779-80 (1997).

ORDER the judgment of the district court AFFIRMED, and remand this matter for the limited purpose of correcting the judgment.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Lee A. Gates, District Judge
Federal Public Defender/Las Vegas
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk