

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTIONE JEAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43975

**FILED**

NOV 17 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Antione Jean's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On May 22, 2003, the district court convicted Jean, pursuant to a guilty plea, of attempted murder with the use of a deadly weapon. The district court sentenced Jean to serve two consecutive terms of 43 to 192 months in the Nevada State Prison. No direct appeal was taken.

On June 17, 2003, Jean filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition, asserting that it was not properly verified pursuant to NRS 34.370. On August 5, 2003, the district court granted the State's motion to dismiss Jean's petition.

On August 28, 2003, Jean filed a second petition for a writ of habeas corpus in the district court. On January 5, 2004, the district court denied Jean's petition, and we affirmed the district court's order.<sup>1</sup>

On May 11, 2004, Jean filed a third 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 Jean or to conduct an evidentiary hearing. On August 23, 2004, the district court denied Jean's petition. This appeal followed.

Jean's petition was successive because he had previously filed a habeas corpus petition.<sup>2</sup> Therefore, Jean's petition was procedurally barred absent a demonstration of good cause and actual prejudice.<sup>3</sup>

Based upon our review of Jean's habeas corpus petition and the record on appeal, we conclude that Jean did not adequately explain why he was unable to present his claims in his prior habeas corpus petition and failed to demonstrate actual prejudice. Accordingly, we conclude that the district court did not err in denying his petition.

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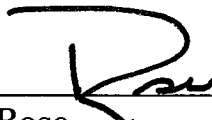
<sup>1</sup>Jean v. State, Docket No. 42973 (Order of Affirmance, August 27, 2004). In our order, we concluded that because Jean's June 17, 2003, habeas corpus petition was not decided on its merits, it was dismissed without prejudice. See Sheriff v. Scalo, 96 Nev. 776, 616 P.2d 402 (1980).

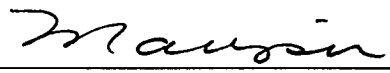
<sup>2</sup>See NRS 34.810(2).

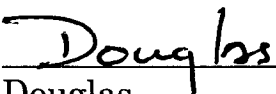
<sup>3</sup>See NRS 34.810(3).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Jean is not entitled to relief and that briefing and oral argument are unwarranted.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Jennifer Togliatti, District Judge  
Antione Jean  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>4</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).