

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY J. BURRIOLA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44015

FILED

SEP 13 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Anthony J. Burriola's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On February 24, 1999, the district court convicted Burriola, pursuant to a jury verdict, of second-degree murder with the use of a deadly weapon. The district court sentenced Burriola to a life term in the Nevada State Prison with parole eligibility after ten years and an equal and consecutive term for the deadly weapon enhancement. This court affirmed Burriola's judgment of conviction.¹ The remittitur issued on July 5, 2002.

On September 10, 2002, Burriola filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Burriola v. State, Docket No. 34844 (Order of Affirmance, March 13, 2002).

State opposed the petition. Pursuant to NRS 34.750, the district court appointed counsel to represent Burriola. Subsequently, Burriola filed two motions to withdraw post-conviction counsel, which the district court denied. On April 16, 2003, Burriola's post-conviction counsel filed a supplemental habeas petition. On July 15, 2003, the district court denied Burriola's petition without an evidentiary hearing.

On July 8, 2004, Burriola filed a second habeas petition, raising claims nearly identical to those presented in his first habeas petition. The district court denied his second petition as untimely filed and successive. This appeal followed.

Burriola filed his petition approximately two years after this court issued the remittitur from his direct appeal. Thus, his petition was untimely filed.² Moreover, Burriola's petition was successive because he had previously filed a habeas petition in the district court.³ His petition was procedurally barred absent a demonstration of good cause and prejudice.⁴

In an attempt to excuse his procedural defects, Burriola asserted that the district court improperly appointed counsel over his objections to represent him in post-conviction proceedings. He argued that his post-conviction counsel filed an unauthorized habeas petition on his

²See NRS 34.726(1).


³See NRS 34.810(1)(b)(2), (2).

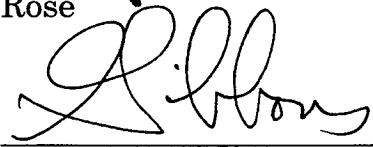
⁴See NRS 34.726(1); NRS 34.810(1)(b), (3).

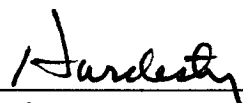
behalf and that the district court declined to consider claims he presented in proper person in his first habeas petition. However, the district court's order respecting Burriola's first petition indicates that it considered claims presented by counsel as well as Burriola's proper person claims. Moreover, in his second petition Burriola did not adequately explain or substantiate any of his claims.⁵ Thus, he failed to demonstrate actual prejudice to overcome applicable procedural bars. Based upon our review of the record on appeal, we conclude that the district court did not err in denying Burriola's second habeas petition as untimely and successive.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Burriola is not entitled to relief and that briefing and oral argument are unwarranted.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

⁵See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Sally L. Loehrer, District Judge
Anthony J. Burriola
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk