

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL ALFRED BOUTEILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44083

PAUL ALFRED BOUTEILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44084

FILED

FEB 03 2005

ORDER OF AFFIRMANCE

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

These are proper person appeals from an order of the district court denying appellant Paul Alfred Bouteiller's post-conviction petitions for writs of habeas corpus. We elect to consolidate these appeals for disposition.¹ Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On August 10, 2000, the district court convicted Bouteiller, pursuant to a jury verdict in district court case no. CR00P0671, of five counts of lewdness with a child under the age of fourteen years. The district court sentenced Bouteiller to five consecutive terms of 48 to 120 months in the Nevada State Prison.

¹See NRAP 3(b).

Also on August 10, 2000, the district court convicted Bouteiller, pursuant to a jury verdict in district court case no. CR97P1267, of sexual assault. The district court sentenced Bouteiller to a life term in the Nevada State Prison with the possibility of parole after 20 years.

This court affirmed Bouteiller's judgments of conviction on appeal.² The remittitur issued on April 8, 2003.

On May 11, 2004, Bouteiller filed proper person post-conviction petitions for writs of habeas corpus in each district court case. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Bouteiller or to conduct an evidentiary hearing. On September 9, 2004, the district court denied Bouteiller's petitions. These appeals followed.³

Bouteiller filed his petitions more than one year after this court issued the remittitur from his direct appeal. Thus, his petitions were untimely filed.⁴ Bouteiller's petitions were procedurally barred absent a demonstration of cause for the delay and prejudice.⁵ Bouteiller

²Bouteiller v. State, Docket Nos. 36741, 36742 (Order of Affirmance, January 31, 2003).

³On October 4, 2004, Bouteiller filed a motion for reconsideration of the denial of his petitions in the district court. To the extent Bouteiller appeals from the denial of his motion for reconsideration, we lack jurisdiction to review this matter. See Phelps v. State, 111 Nev. 1021, 900 P.2d 344 (1995).

⁴See NRS 34.726(1).

⁵See id.

offered no explanation for the untimely filing of the petitions. It appears that Bouteiller may have mistakenly believed that his petitions were timely filed as they were filed within one year of this court's order denying Bouteiller's petition for en banc reconsideration of this court's order affirming his judgments of conviction. However, the pendency of a petition for en banc reconsideration does not stay the issuance of the remittitur and thus does not toll the requirement to file a habeas petition within one year after the issuance of the remittitur.⁶ Accordingly, we conclude that Bouteiller's petitions were procedurally barred.

However, as a separate and independent basis for denying relief, we conclude that Bouteiller failed to demonstrate the merits of his claims. In each of his petitions, Bouteiller asserted three ineffective assistance of counsel claims and a claim that his right to a speedy trial was violated. To support each of these allegations, Bouteiller stated that each of these claims was "reserved" and would be amended or supplemented at some unspecified time because he had not yet received his files and records from his counsel. In addition, in each petition, Bouteiller "reserved" grounds five through twenty-five, asserting that these claims would be amended or supplemented at a later date, as he was not in possession of his files and records.

Bouteiller offered no explanation whatsoever regarding the nature of his allegations.⁷ Moreover, there is no indication in the record

⁶See NRAP 40A(b); NRS 34.726(1).

⁷See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

that Bouteiller sought or was granted leave to supplement his petitions. As Bouteiller failed to substantiate his claims, we conclude that the district court did not err in denying his petitions.

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

ORDER the judgments of the district court AFFIRMED.

Becker, C.J.
Becker

Rose, J.
Rose

Hardesty, J.
Hardesty

cc: Hon. Janet J. Berry, District Judge
Paul Alfred Bouteiller
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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