

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES SANFORD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44128

**FILED**

JUL 21 2005

ORDER OF AFFIRMANCE

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

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

On April 6, 1999, the district court convicted Sanford, pursuant to a jury verdict, of two counts each of conspiracy to commit robbery and burglary, and one count each of robbery with the use of a deadly weapon and attempted robbery. On direct appeal, this court reversed the deadly weapon enhancement due to insufficient evidence, but affirmed the remainder of Sanford's judgment of conviction and sentence.<sup>1</sup> Sanford was ultimately sentenced to a period totaling 72 to 180 months in the Nevada State Prison.<sup>2</sup>

On March 11, 2003, Sanford filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Sanford filed a reply. Pursuant to NRS 34.750

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<sup>1</sup>Sanford v. State, Docket Nos. 33981, 34103 (Order Affirming in Part, Reversing in Part, and Remanding, February 18, 2003).

<sup>2</sup>An amended judgment of conviction was entered on March 10, 2003. A second amended judgment of conviction was entered on March 14, 2003.

and 34.770, the district court declined to appoint counsel to represent Sanford or to conduct an evidentiary hearing. On August 29, 2003, the district court denied Sanford's petition. This court affirmed the district court on December 14, 2004.<sup>3</sup>

On February 4, 2004, while this appeal was pending, Sanford filed a second proper person post-conviction petition for writ of habeas corpus in the district court. Sanford's counsel of record filed a petition for writ of habeas corpus on Sanford's behalf on August 3, 2004. On September 14, 2004, the district court denied the habeas petition. This appeal followed.

"The court shall dismiss a petition if the court determines that the petitioner's conviction was the result of a trial and the grounds for the petition could have been raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief."<sup>4</sup> NRS 34.810(2) requires a petitioner to show good cause and actual prejudice for raising new claims in a successive petition for a writ of habeas corpus. To show good cause, a petitioner must demonstrate that an impediment external to the defense prevented him from complying with procedural default rules.<sup>5</sup>

Sanford offers no excuse whatsoever to explain his procedural defects, except that he was not represented by counsel in his first

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<sup>3</sup>Sanford v. State of Nevada, Docket Nos. 41759, 41764 (Order of Affirmance, December 14, 2004).

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

<sup>5</sup>See Crump v. Warden, 113 Nev. 293, 302, 934 P.2d 247, 252 (1997).

petition.<sup>6</sup> We conclude that Sanford did not demonstrate good cause for his failure to comply with the procedural rules.<sup>7</sup>

Therefore, because Sanford has not demonstrated good cause for filing a successive petition, we conclude that the district court did not err in denying the petition as procedurally barred. Accordingly, we

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

Becker, C.J.  
Becker

Maupin, J.  
Maupin

Parraguirre, J.  
Parraguirre

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<sup>6</sup>Phelps v. Director of Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that organic brain damage and lack of legal assistance are not sufficient good cause).

<sup>7</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>8</sup>We have reviewed all documents that Sanford has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Sanford has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Lee A. Gates, District Judge  
Althea Gilkey  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk