

IN THE SUPREME COURT OF THE STATE OF NEVADA

GENE ANTHONY ALLEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44180

FILED

MAR 04 2005

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 Gene Allen's post-conviction petitions for writs of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On April 7, 2003, the district court convicted Allen, pursuant to a guilty plea, of one count each of sexual assault of a minor under the age of sixteen and lewdness with a minor under the age of fourteen. The district court sentenced Allen to serve a term of life in the Nevada State Prison with the possibility of parole after ten years for the lewdness conviction, and a concurrent term of five to twenty years for the sexual assault conviction. This court affirmed Allen's judgment of conviction and sentence on direct appeal.¹ The remittitur issued on April 6, 2004.

On June 11, 2003, Allen filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Allen filed

¹Allen v. State, Docket No. 41274 (Order of Affirmance, March 11, 2004).

supplemental proper person post-conviction petitions for writs of habeas corpus on July 8, 2003, and December 26, 2003. The State filed an opposition. On February 23, 2004, the district court denied Allen's petition. On appeal, this court affirmed the order of the district court.²

On February 24, 2004, Allen filed a proper person motion to vacate the judgment of conviction.³ On March 11, 2004, Allen filed a proper person amended post-conviction petition for a writ of habeas corpus. Allen additionally filed several other motions. The State opposed Allen's petitions and motions. The district court declined to appoint counsel to represent Allen or conduct an evidentiary hearing. On June 25, 2004, the district court denied Allen's petitions and motions. On appeal, this court affirmed the order of the district court.⁴

On August 10, 2004, Allen filed a post-conviction petition for a writ of habeas corpus. On August 17, 2004, Allen filed an amended petition for a writ of habeas corpus. On August 23, 2004, Allen filed another post-conviction petition for a writ of habeas corpus. The State opposed and moved to dismiss the petitions. The district court declined to

²Allen v. State, Docket No. 42969 (Order of Affirmance, September 17, 2004).

³Because this motion appeared to challenge the judgment of conviction, the motion was construed as a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(b).

⁴Allen v. State, Docket No. 43599 (Order of Affirmance, December 6, 2004).

appoint counsel to represent Allen or conduct an evidentiary hearing. On October 11, 2004, the district court denied Allen's petitions. This appeal followed.

Allen's August 10, 2004, August 17, 2004, and August 23, 2004, petitions for writs of habeas corpus were successive because he had previously filed post-conviction petitions for a writ of habeas corpus.⁵ Therefore, Allen's habeas petitions were procedurally barred absent a demonstration of good cause and actual prejudice.⁶

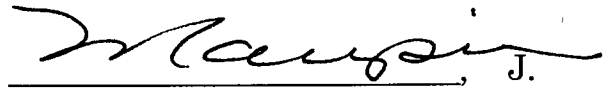
In an attempt to excuse his successive petitions, Allen asserted that he had not been provided with transcripts or a complete record. However, the claims raised in these petitions are substantially similar to the claims raised in Allen's prior petitions, and Allen failed to demonstrate that the lack of transcripts or a complete record prevented him from adequately raising his claims. Further, Allen did not establish that he would be prejudiced by the dismissal of these post-conviction habeas petitions because the claims he raised were either without merit or barred by the law of the case.⁷ Consequently, the district court did not err in denying Allen's petitions.

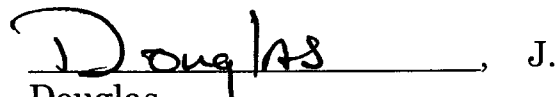
⁵See NRS 34.810(2).

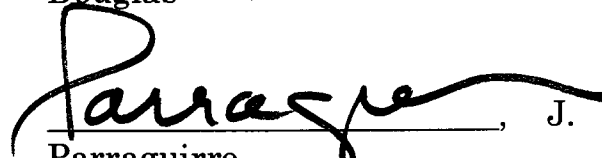
⁶See NRS 34.810(3).

⁷See Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

Having reviewed the record on appeal and for the reasons set forth above, we conclude that Allen is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we ORDER the judgment of the district court AFFIRMED.⁹


Maupin


Douglas


Parraguirre

cc: Hon. John S. McGroarty, District Judge
Gene Anthony Allen
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

⁹We have reviewed all documents that Allen 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 Allen 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.