IN THE SUPREME COURT OF THE STATE OF NEVADA

DUKE FREDRICK CRANFORD A/K/A BONNIE F. CRANFORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44238

FILED

FEB 16 2005

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus and an order denying a petition for DNA testing. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On July 1, 1977, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison without the possibility of parole. This court affirmed appellant's judgment of conviction on direct appeal.[1] The remittitur issued July 23, 1979. Appellant unsuccessfully sought post-conviction relief.[2]

[1]Cranford v. State, 95 Nev. 471, 596 P.2d 489 (1979).

[2]See Cranford v. State, Docket No. 29344 (Order Dismissing Appeal, November 19, 1996); Cranford v. State, Docket No. 20894 (Order

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On August 5, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus and a petition for DNA testing in the district court. The State opposed the habeas corpus petition arguing that the petition was untimely filed and successive. The State specifically pleaded laches. The State further opposed the petition for DNA testing. The district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. The district court denied appellant's petitions. This appeal followed.

Appellant filed his habeas corpus petition more than twenty-five years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.[3] Moreover, appellant's petition was successive because he had previously sought post-conviction relief.[4] Appellant's habeas corpus petition was procedurally barred absent a demonstration of good cause and prejudice.[5] Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.[6]

. . . continued

Dismissing Appeal, April 19, 1990); Cranford v. State, Docket No. 20097 (Order Dismissing Appeal, June 22, 1989).

[3]See NRS 34.726(1).

[4]See NRS 34.810(1)(b)(2), (2).

[5]See NRS 34.726(1); NRS 34.810(1)(b), (3).

[6]See NRS 34.800(2).

In an attempt to excuse the procedural defects in his habeas corpus petition, appellant argued that the recent decision in Blakely v. Washington,[7] necessitated a reversal of his conviction. Appellant claimed that the jurors were prevented from finding him guilty of anything less than first degree murder. Appellant also claimed that he was deprived of Nevada legal materials because he had been housed out-of-state since 1983. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause for his procedural defects. The holding in Blakely is inapposite, and thus, it does not provide good cause for the procedural defects. The jury in the instant case found appellant guilty of first degree murder, and thus, the district court properly imposed a sentence for first degree murder. Appellant failed to demonstrate that his alleged lack of Nevada legal materials excused his twenty-five year delay.[8] Appellant further failed to overcome the presumption of prejudice to the State. Therefore, we conclude that the district court did not err in denying appellant's habeas corpus petition.

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[7]124 S. Ct. 2531 (2004).

[8]See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994). It is clear that appellant has some access to Nevada legal materials as Nevada citations are provided in his petition for DNA testing. It also appears that appellant has been housed in Nevada for at least a brief part of the time that he alleged he was out-of-state.

In his petition for DNA testing, appellant sought testing of a spot of blood found on his pant leg. Appellant claimed that DNA testing would establish that the blood was his and not the victim's and that this would establish his innocence. Appellant relied upon NRS 176.0911-0919 in support of his request.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition for DNA testing. NRS 176.0918, setting forth requirements of a petition for genetic marker testing of evidence, is applicable only to persons sentenced to death. No other statutory provision provides for a post-conviction petition for DNA testing. However, we recognize that this request could be made in a post-conviction petition for a writ of habeas corpus challenging the validity of a judgment of conviction.[9] Even assuming that the prior unavailability of DNA testing would constitute cause to excuse an untimely and successive petition, appellant failed to demonstrate prejudice or a fundamental miscarriage of justice.[10] Appellant failed to demonstrate that DNA testing would conclusively establish his innocence.[11] Satisfactory evidence of appellant's guilt, separate and apart

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[9]See NRS 34.724(2)(b).

[10]See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); Hogan v. Warden, 109 Nev. 952, 860 P.2d 710 (1993).

[11]See Sewell v. State, 592 N.E.2d 705, 708 (Ind. Ct. App. 1992) (recognizing that DNA testing is warranted "only where a conviction

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from the spot of blood, was presented during the trial. Therefore, we affirm the order of the district court denying this petition.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[12] Accordingly, we

ORDER the judgments of the district court AFFIRMED.[13]

Becker, C.J.
Becker

Douglas, J.
Douglas

Parraguirre, J.
Parraguirre

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rested largely upon identification evidence and [testing] could definitively establish the accused's innocence").

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

[13]We have reviewed all documents that appellant 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 appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Donald M. Mosley, District Judge
Duke Fredrick Cranford
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk