

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC ZESSMAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44453

**FILED**

JUN 15 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 dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On June 20, 2003, the district court convicted appellant of one count of conspiracy to commit robbery pursuant to a guilty plea and one count of robbery pursuant to a plea of nolo contendere.<sup>1</sup> The district court sentenced appellant to serve in the Nevada State Prison a term of twenty-four to seventy-five months for robbery and a concurrent term of twelve to thirty months for conspiracy. This court affirmed the judgment of conviction on direct appeal.<sup>2</sup> The remittitur issued on October 21, 2003.

On July 24, 2003, while his direct appeal was pending, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On October

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<sup>1</sup>The district court entered amended judgments of conviction on August 5, 2003, and September 9, 2003.

<sup>2</sup>Zessman v. State, Docket No. 41490 (Order of Affirmance, September 24, 2003).

14, 2003, the district court denied the petition. This court affirmed the order of the district court on appeal.<sup>3</sup>

On November 25, 2003, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that the petition was successive. Appellant filed a response. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On March 18, 2005, the district court dismissed appellant's petition. This appeal followed.

Appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.<sup>4</sup> Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.<sup>5</sup>

Appellant argued that his procedural defect should be excused because he was filing the petition pursuant to this court's statement in the direct appeal that claims challenging the validity of a guilty plea must be raised in the district court.

Based upon our review of the record on appeal, we conclude that the district court did not err in concluding that appellant failed to demonstrate good cause for the successive petition. The claims

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<sup>3</sup>Zessman v. State, Docket No. 42099 (Order of Affirmance, June 4, 2004).

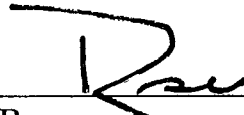
<sup>4</sup>See NRS 34.810(2). Appellant's claims challenging the validity of the plea were an abuse of the writ because he had failed to present them in the prior petition. Appellant's claims relating to restitution, the denial of his motion to return seized property, and an illegal search and seizure were previously decided against petitioner.


<sup>5</sup>See NRS 34.810(3).

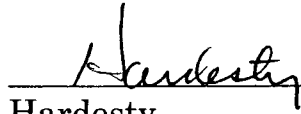
challenging the validity of the guilty plea were reasonably available to appellant to raise in his first petition; appellant's failure to raise those claims in the first petition is not an impediment external to the defense.<sup>6</sup> In declining on direct appeal to reach appellant's claims challenging the validity of his guilty plea, this court did not determine that appellant had good cause to raise them in a successive petition. Additionally, appellant has provided no good cause argument for re-litigating the claims previously decided in the prior proceedings.<sup>7</sup> Therefore, we affirm the order of the district court.

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.<sup>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

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<sup>6</sup>See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>7</sup>See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

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

cc: Hon. Jackie Glass, District Judge  
Eric Zessman  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk