

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY ROSS BLACK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44472

FILED

APR 27 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 denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On February 16, 1999, the district court convicted appellant, pursuant to a jury verdict, of one count of first-degree kidnapping, one count of lewdness with a child under the age of fourteen, and five counts of sexual assault of a minor under sixteen years of age. The district court sentenced appellant to serve a term of life in the Nevada State Prison, with the possibility of parole after five years, for the kidnapping conviction, a term of thirty-two to one hundred twenty months for the lewdness conviction and a term of life with the possibility of parole after twenty years for each of the sexual assault convictions. All sentences were imposed to run concurrently. This court dismissed appellant's appeal from

his judgment of conviction and sentence.¹ The remittitur issued on June 20, 2000.

On September 12, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On November 16, 2000, appellant filed a proper person supplement to the petition and on May 9, 2001, appellant filed a second supplement to the petition with the aid of counsel. The State opposed the petition and supplements. Appellant filed a reply. Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On December 6, 2001, the district court denied appellant's petition. This court affirmed the denial of the petition on appeal.²

On October 7, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus and a supplement to the petition in the district court. The State opposed and moved to dismiss the petition and supplement. Appellant filed a reply. 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 January 10, 2005, and January 19, 2005, the district court entered orders denying appellant's petition.³ This appeal followed.

¹Black v. State, Docket No. 33753 (Order Dismissing Appeal, May 25, 2000).

²Black v. State, Docket No. 38780 (Order of Affirmance, May 7, 2003).

³The orders are identical except for dates the orders were signed.

Appellant filed his petition more than four years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had previously filed a post-conviction habeas corpus petition.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶ A petitioner may be entitled to review of procedurally defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice.⁷

In an attempt to excuse his procedural defects, appellant argued that he was actually innocent of the charges. Appellant also argued that the filing of the petition was necessary for exhaustion purposes.

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 to excuse the procedural defects. Filing a petition for purposes of exhaustion is not good cause. Additionally, appellant's claim of innocence was no more than a rehashing of the claims raised in his first post-conviction habeas corpus petition, and appellant is barred by

⁴See NRS 34.726(1).

⁵See NRS 34.810(1)(b)(2), (2).


⁶See NRS 34.726(1); NRS 34.810(1)(b), (3).


⁷Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

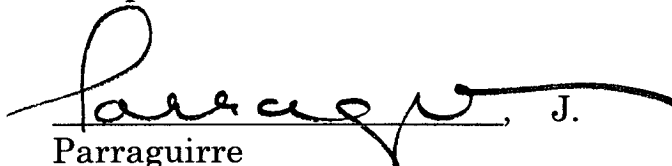
the law of the case from again raising those issues.⁸ Finally, appellant's claim of actual innocence is not supported by the record. Therefore, we affirm the order of the district court denying appellant's petition as procedurally barred.

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, C.J.
Becker


_____, J.
Maupin


_____, J.
Parraguirre

⁸See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰We 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. Michael A. Cherry, District Judge
Anthony Ross Black
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk