

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE MANUEL SANCHEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44493

FILED

APR 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 in part and dismissing without prejudice in part appellant Jose Manuel Sanchez's post-conviction petitions for writs of habeas corpus. Fifth Judicial District Court, Mineral County; John P. Davis, Judge.

On May 13, 1992, the district court convicted Sanchez, pursuant to a guilty plea, of second-degree murder with the use of a deadly weapon. The district court sentenced Sanchez to serve two consecutive terms of ninety-nine years in the Nevada State Prison. This court dismissed Sanchez's appeal from his judgment of conviction and sentence.¹ The remittitur issued on June 13, 1995.

On April 16, 2004, Sanchez filed two proper person post-conviction petitions for writs of habeas corpus in the district court.² The State opposed the petitions, arguing that the claims Sanchez raised

¹Sanchez v. State, Docket No. 23377 (Order Dismissing Appeal, May 25, 1995).

²Sanchez's petition entitled "petitioner's number one petition for writ of habeas corpus" contained various claims challenging his judgment of conviction; his second petition, "petitioner's number two petition for writ of habeas corpus," primarily concerned his denial of parole.

attacking his judgment of conviction and sentence were untimely. Moreover, the State specifically pleaded laches. The State further argued that the majority of the claims raised in "petitioner's number two petition" should be heard in the district court in the county in which Sanchez is incarcerated, rather than the county in which he was convicted. Sanchez filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Sanchez or to conduct an evidentiary hearing. On December 3, 2004, the district court denied in part and dismissed without prejudice in part Sanchez's petitions. This appeal followed.

Sanchez's "number one petition" raised claims challenging his judgment of conviction and sentence. Sanchez filed his petition nearly nine years after this court issued the remittitur from his direct appeal. Thus, Sanchez's petition was untimely filed.³ The petition was procedurally barred absent a demonstration of good cause and prejudice.⁴ Further, because the State specifically pleaded laches, Sanchez was required to overcome the presumption of prejudice to the State.⁵

In an attempt to excuse his procedural defects, Sanchez argued the following: he did not have legal assistance to raise these claims earlier; he recently learned of his constitutional rights; he did not understand he could appeal these issues; and he has a limited understanding of English. We conclude that the district court did not err in denying Sanchez's "number one petition." Sanchez failed to establish

³See NRS 34.726(1).

⁴See *id.*; NRS 34.810(3).

⁵See NRS 34.800(2).

that an impediment external to the defense prevented him from filing a timely petition.⁶ Further, Sanchez did not overcome the presumption of prejudice to the State. Finally, Sanchez would not be unduly prejudiced by application of the procedural time bar because the claims he raised in his petition are without merit. Therefore, we affirm the district court's denial of Sanchez's "number one petition."

It appears that the majority of the claims Sanchez raised in his "number two petition" challenge his denial of parole. Because these claims did not challenge Sanchez's judgment of conviction and sentence, they should have been raised in the district court in the county in which Sanchez was incarcerated, not the county in which he was convicted. The district court did not err in dismissing without prejudice Sanchez's claims concerning his denial of parole.⁷ Sanchez can re-raise these claims in the appropriate district court.⁸ It further appears that some of the claims Sanchez raised in his "number two petition" challenge his judgment of conviction and sentence. For the reasons discussed above, the district court did not err in concluding that to the extent that Sanchez raised claims challenging his judgment of conviction and sentence, they were procedurally barred.⁹

⁶See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

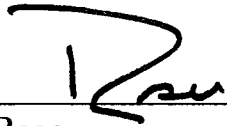
⁷See NRS 34.738(3).

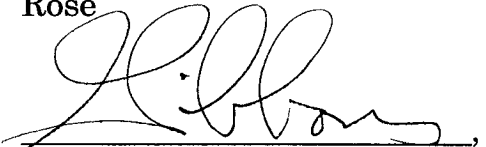
⁸See NRS 34.738(1).

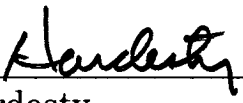
⁹See NRS 34.726(1); NRS 34.810(3).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Sanchez is not entitled to relief and that briefing and oral argument are unwarranted.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹¹


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. John P. Davis, District Judge
Jose Manuel Sanchez
Attorney General Brian Sandoval/Carson City
Mineral County District Attorney
Mineral County Clerk

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹¹We have reviewed all documents that Sanchez 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 Sanchez 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.