

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM CATO SELLS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44513

FILED

APR 22 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rubade*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On April 22, 1994, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary, one count of possession of a stolen vehicle, and one count of possession of burglary tools. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole and a consecutive term of one year in the Clark County Detention Center.¹ This court dismissed

¹An additional term of life with the possibility of parole was imposed to run concurrently with the first term of life with the possibility of parole. The district court entered an amended judgment of conviction on November 28, 1995, for the purpose of correcting the amount of jail time credits.

appellant's appeal from his judgment of conviction and sentence.² The remittitur issued on May 21, 1996.

On May 19, 1997, appellant filed his first proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied the petition, and appellant filed an appeal from that decision. On January 8, 1999, appellant filed his second proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied the petition, and appellant filed an appeal from that decision. On February 16, 1999, appellant filed a proper person motion to correct or vacate an illegal sentence. The district court denied the motion, and appellant appealed from that decision. This court consolidated the appeals and affirmed the orders of the district court.³

On July 5, 2000, appellant filed a proper person motion to vacate, modify and correct the judgment of conviction and to rescind and expunge the presentence investigation report. The district court denied the motion, and this court affirmed that order on appeal.⁴

On October 25, 2004, appellant filed his third post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that the petition was untimely and

²Sells v. State, Docket No. 25953 (Order Dismissing Appeal, May 1, 1996).

³Sells v. State, Docket Nos. 31265, 33994, 34062 (Order of Affirmance, December 4, 2000).

⁴Sells v. State, Docket No. 38115 (Order of Affirmance, September 5, 2002).

successive. Moreover, the State specifically pleaded laches. 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 January 18, 2005, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition approximately eight and one-half years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁵ Moreover, appellant's petition was successive because he had previously filed two post-conviction petitions for writs of habeas corpus and two post-conviction motions seeking relief from his sentence.⁶ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁷ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁸ A petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice.⁹

Appellant claimed that his procedural defects should be excused because he received ineffective assistance of counsel throughout the proceedings. He also claimed that he has been placed in segregated

⁵See NRS 34.726(1).

⁶See NRS 34.810(1)(b)(2), (2).

⁷See NRS 34.726(1); NRS 34.810(1)(b), (3).

⁸See NRS 34.800(2).

⁹Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

confinement for "possession of knowledge" and this has prevented him from having adequate access to materials necessary in the preparation of the petition and proof of his claims. Appellant further claimed that failure to review his petition would result in a fundamental miscarriage of justice because he was actually innocent of the offense. He based his claim of actual innocence on his belief that the victim, Ronald Sorrels, committed perjury when he testified that he was the owner and/or manager of Interstate Recovery of Nevada, Inc. Appellant claimed that Sorrels never owned, managed or had any property interest in the company. He claimed that Sorrels' lies deprived the district court of jurisdiction over the matter. Appellant argued that the district court's actions in earlier post-conviction proceedings, his poverty and his incarcerated status prevented him from raising his allegations earlier.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant had failed to demonstrate good cause to excuse his untimely and successive petition. Appellant failed to demonstrate that an impediment external to the defense prevented him from complying with the procedural requirements as his claims were reasonably available within the one-year time for filing a habeas corpus petition.¹⁰ Appellant further did not demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice because appellant's claim of actual innocence was not supported by the record. The documents submitted by appellant did not demonstrate


¹⁰Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

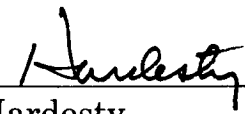
that Sorrels committed perjury, and thus, appellant failed to demonstrate that he was actually innocent or that the district court lacked jurisdiction. Therefore, we affirm the order of the district court.

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.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹²


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹²We 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. Stewart L. Bell, District Judge
William Cato Sells Jr.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk