

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN MAURICIO CASTILLO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44555

FILED

APR 05 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Juan Castillo's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

On July 24, 1996, the district court convicted Castillo, pursuant to a jury verdict, of first-degree murder with the use of a firearm to promote gang activity. The district court sentenced Castillo to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. This court dismissed Castillo's appeal from his judgment of conviction and sentence.¹ The remittitur issued on August 18, 1998.

On July 12, 1999, Castillo filed a proper person post-conviction petition for a writ of habeas corpus. Pursuant to NRS 34.750, the district court appointed counsel to represent Castillo and counsel filed a supplement. The State opposed the petition. On October 20, 2000, the

¹Castillo v. State, Docket No. 29169 (Order Dismissing Appeal, July 28, 1998).

district court conducted an evidentiary hearing and subsequently denied Castillo's petition. This court affirmed the order of the district court.²

On August 16, 2004, Castillo filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Castillo or to conduct an evidentiary hearing. On December 30, 2004, the district court denied Castillo's petition. This appeal followed.

Castillo filed his petition nearly six years after this court issued the remittitur from his direct appeal. Thus, Castillo's petition was untimely filed.³ Moreover, Castillo's petition was successive because he previously filed a post-conviction petition for a writ of habeas corpus.⁴ Castillo's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

In an attempt to excuse his procedural defects, Castillo argued that his counsel was ineffective and he did not have access to an investigator until the Office of the Federal Public Defender was appointed to represent him. We conclude that Castillo failed to demonstrate that an impediment external to the defense prevented him from raising these

²Castillo v. State, Docket No. 37084 (Order of Affirmance, July 10, 2002).

³See NRS 34.726(1).


⁴See NRS 34.810(1)(b)(2),(2).


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

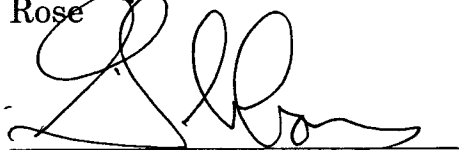
claims in his first timely petition.⁶ Therefore, the district court did not err in concluding that Castillo's claims were procedurally barred.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Castillo is not entitled to relief and that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Becker


_____, J.
Rose


_____, J.
Gibbons

cc: Second Judicial District Court Dept. 9
Juan Mauricio Castillo
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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

⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).