

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAMARR ROWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44595

FILED

APR 22 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 appellant Lamar Rowell's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On September 9, 1999, the district court convicted Rowell, pursuant to a guilty plea, of one count of burglary in district court case number C149775. The district court sentenced Rowell to serve a term of 18 to 96 months in the Nevada State Prison. This court dismissed Rowell's untimely appeal for lack of jurisdiction.¹ Thereafter, Rowell unsuccessfully sought post-conviction relief.²

On October 26, 2004, Rowell filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Rowell filed a reply. Pursuant to NRS 34.750

¹Rowell v. State, Docket No. 35959 (Order Dismissing Appeal, May 8, 2000).

²Rowell v. State, Docket No. 37283 (Order of Affirmance, July 9, 2001); Rowell v. State, Docket Nos. 37836, 37838, 37839 (Order of Affirmance, December 14, 2001); Rowell v. Warden, Docket No. 43019 (Order of Affirmance, September 22, 2004); Rowell v. State, Docket No. 43728 (Order of Affirmance, December 13, 2004).

and 34.770, the district court declined to appoint counsel to represent Rowell or to conduct an evidentiary hearing. On January 12, 2005, the district court denied Rowell's petition. This appeal followed.

Rowell filed his petition more than five years after entry of the judgment of conviction. Thus, Rowell's petition was untimely filed.³ Moreover, Rowell's petition was successive because he had previously filed several post-conviction habeas corpus petitions.⁴ Rowell's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

In an attempt to excuse his procedural defects, Rowell argued that the Lozada remedy⁶ is unconstitutional and he was not able to raise this issue earlier because it was not available to him. Rowell further contended that his counsel was ineffective and refused to file a direct appeal on his behalf. We conclude that Rowell did not establish that an impediment external to the defense prevented him from raising his claims earlier.⁷ Further, as this court has previously informed Rowell, an appeal deprivation claim does not constitute good cause to excuse an untimely and successive petition.⁸

Rowell additionally claimed that his petition is not subject to the procedural requirements of NRS chapter 34 because it is a challenge to

³See NRS 34.726(1).

⁴See NRS 34.810(2).

⁵See NRS 34.726(1); NRS 34.810(3).

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


⁷See id.

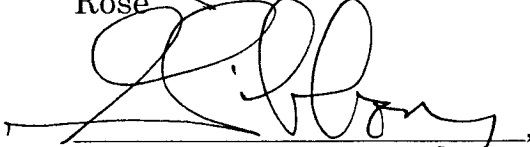
⁸See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).


his confinement pursuant to NRS 34.360.⁹ However, contrary to Rowell's assertion, his petition challenged the validity of his conviction and is therefore subject to the procedural requirements of NRS chapter 34.¹⁰ Consequently, we conclude that the district court did not err in denying Rowell's untimely and successive petition.

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

⁹See NRS 34.720.

¹⁰See NRS 34.724(2)(b).

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

¹²We note that Rowell has repeatedly challenged the validity of his conviction and that this court has rejected this challenge. We caution Rowell that a prisoner may forfeit all deductions of time earned by the prisoner if the court finds that the prisoner has filed a document in a civil action for an "improper purpose." See NRS 209.451(1)(d)(1). A "civil action" includes a petition for a writ of habeas corpus filed on or after October 1, 1999. See 1999 Nev. Stat., ch. 59, §§ 5,6, at 146-47. Further, pursuant to NRS 22.010(7), a district court may find an individual in contempt of court for "[a]busing the process or proceedings of the court."

cc: Hon. Donald M. Mosley, District Judge
Lamarr Rowell
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk