

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN FLOYD VOSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44637

FILED

APR 22 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 a successive and untimely post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On November 27, 1996, the district court convicted appellant, pursuant to a jury trial, of one count of burglary, two counts of uttering a forged instrument, two counts of forgery, and one count of attempted theft. The district court sentenced appellant to serve consecutive terms totaling 128 to 360 months in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction.¹ The remittitur issued on April 6, 1999.

On March 9, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed post-conviction counsel to assist appellant. On August 9, 2001, after conducting an evidentiary hearing, the district court denied the

¹Voss v. State, Docket No. 29783 (Order Dismissing Appeal, March 11, 1999).

petition in part and granted the petition in part.² This court affirmed the order of the district court on appeal.³

On April 14, 2003, appellant filed a proper person motion for leave to file a successive habeas corpus petition and a second post-conviction petition for a writ of habeas corpus. The district court denied appellant's motion and petition. This court affirmed the order of the district court on appeal.⁴

On October 15, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 December 13, 2004, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately five 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

²The district court determined that a new sentencing hearing was appropriate. The record on appeal does not contain any documents relating to the new sentencing hearing.

³Voss v. State, Docket No. 38373 (Order of Affirmance, January 17, 2002).

⁴Voss v. State, Docket No. 42307 (Order of Affirmance, July 27, 2004).

⁵See NRS 34.726(1).

petitions for writs of habeas corpus.⁶ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁷

Appellant raised nearly identical claims to those raised in his 2003 untimely and successive habeas corpus petition. In an attempt to excuse his procedural defects, appellant argued that his attorneys failed to transfer copies of his case files in a timely fashion and that he only received a copy of a preliminary hearing transcript in 2003. Appellant further claimed that his post-conviction counsel was ineffective for failing to raise his claims in the first post-conviction petition.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition. This court has already determined that the lack of the preliminary hearing transcript did not constitute good cause to excuse his procedural defects.⁸ Further, trial counsel's failure to send appellant his file did not constitute good cause to excuse the procedural defects.⁹ Finally, appellant did not have the right to counsel at the time he filed his first petition, and therefore he did not have the right to the effective assistance of counsel in that proceeding.¹⁰ "[H]ence, 'good cause' cannot be shown based on an ineffectiveness of post-

⁶See NRS 34.810(1)(b)(2), (2).

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

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


⁹Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

¹⁰See NRS 34.750; McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996); see also Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997).

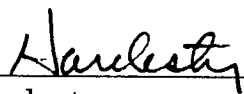
conviction counsel claim."¹¹ Therefore, we affirm the order of the district court.

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.¹² Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹³


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

¹¹McKague, 112 Nev. at 165, 912 P.2d at 258.

¹²See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹³We 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. Steven P. Elliott, District Judge
Steven Floyd Voss
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk