

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 44665

FILED

APR 19 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 Lamarr Rowell's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On September 16, 1999, the district court convicted Rowell, pursuant to a guilty plea, of burglary. The district court sentenced Rowell to serve a term of 48 to 120 months in the Nevada State Prison. This court dismissed Rowell's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹ Thereafter, Rowell unsuccessfully sought post-conviction relief.²

On October 20, 2004, Rowell filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On

¹Rowell v. State, Docket No. 37635 (Order Dismissing Appeal, May 8, 2001).

²Rowell v. State, Docket Nos. 36601, 36658, 37023 (Order of Affirmance and Dismissing Appeal, April 10, 2001); Rowell v. State, Docket No. 37749 (Order of Affirmance, December 12, 2001); Rowell v. State, Docket No. 43059 (Order of Affirmance, August 27, 2004); Rowell v. State, Docket No. 42909 (Order of Affirmance, September 1, 2004).

November 3, 2004, Rowell filed a supplement to his petition. The State opposed the petition. Rowell filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Rowell or to conduct an evidentiary hearing. On February 4, 2004, the district court denied Rowell's petition. This appeal followed.

Rowell filed his petition more than five years after entry of his judgment of conviction. Thus, Rowell's petition was untimely filed.³ Moreover, his 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 he did not have the assistance of an inmate law clerk until late 2003. 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.⁶ Further, as this court previously informed Rowell, an appeal deprivation claim does not constitute good cause to excuse an untimely and successive petition.⁷

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).


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

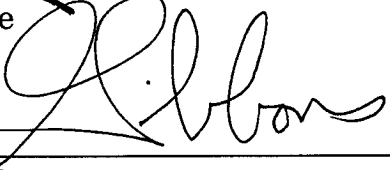
⁷See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

his confinement pursuant to NRS 34.360.⁸ 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 34.⁹ 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 Rowell 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

⁸See NRS 34.720.

⁹See NRS 34.724(2)(b).

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

¹¹We caution Rowell that a prisoner may forfeit all deductions of statutory good 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.

cc: Hon. Lee A. Gates, District Judge
Lamarr Rowell
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk