

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 44686

FILED

MAY 03 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ribord*
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 April 26, 1999, the district court convicted Rowell, pursuant to a guilty plea, of drawing and passing a check without sufficient funds in drawee bank with the intent to defraud. The district court sentenced Rowell to serve a term of twelve to thirty-six months in the Nevada State Prison. The district court suspended the sentence and placed Rowell on probation for a period of time not to exceed three years. The district court awarded Rowell 78 days of credit for pre-sentence incarceration. On August 6, 1999, the district court entered an order revoking Rowell's probation and executing the sentence previously imposed. This court dismissed Rowell's untimely appeal from his

judgment of conviction and sentence for lack of jurisdiction.¹ 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. On November 12, 2004, Rowell filed a supplement to the petition. The State opposed and moved to dismiss 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 18, 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 his counsel was ineffective and refused to file a direct appeal on his behalf. We conclude that Rowell did not establish that an impediment

¹Rowell v. State, Docket No. 35960 (Order Dismissing Appeal, May 2, 2000).

²Rowell v. State, Docket Nos. 36693, 37210, 37242 (Order of Affirmance and Dismissing Appeal and Limited Remand for Correction of Judgment of Conviction, April 10, 2001); Rowell v. State, Docket No. 42770 (Order of Affirmance, August 30, 2004); Rowell v. State, Docket No. 43218 (Order of Affirmance, November 15, 2004).

³See NRS 34.726(1).

⁴See NRS 34.810(2).

⁵See NRS 34.726(1); NRS 34.810(3).

external to the defense prevented him from raising his claims earlier.⁶ Further, as this court has 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 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.

Finally, we conclude that Rowell was precluded from obtaining relief in a habeas corpus petition because he was not under restraint for the offense at issue at the time he filed his petition.¹⁰ We caution Rowell that continued filing of petitions challenging this conviction could result in the forfeiture of all good time credits earned by him.¹¹ Further, pursuant

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

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

⁸See NRS 34.720.

⁹See NRS 34.724(2)(b).

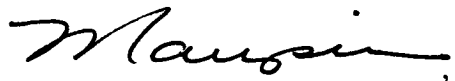
¹⁰See Jackson v. State, 115 Nev. 21, 973 P.2d 241 (1999).

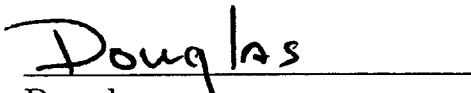
¹¹See NRS 209.451(1)(d)(1) (a prisoner may forfeit all deductions of time earned if the court finds that the prisoner has filed a document in a civil action for an "improper purpose"). A "civil action" includes a petition for a writ of habeas corpus filed on or after October 1, 1999. See 1999 Nev. Stat., ch. 59, §§ 5,6, at 146-47.

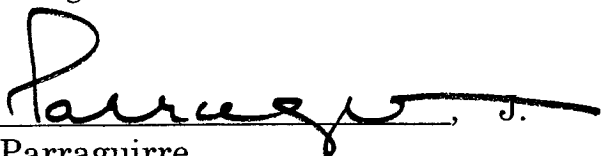
to NRS 22.010(7), a district court may find an individual in contempt of court for "[a]busing the process or proceedings of the court."

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.¹² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

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

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