

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHARMARLO ANTOINE TINCH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44691

FILED

APR 13 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 dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On December 11, 1995, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit murder with the intent to promote, further or assist a criminal gang and one count of first degree murder with the use of a deadly weapon with the intent to promote, further or assist a criminal gang. The district court sentenced appellant to serve in the Nevada State Prison two consecutive terms of six years for conspiracy and two consecutive terms of life with the possibility of parole for murder. The latter terms were imposed to run concurrently with the former terms. This court affirmed the judgment of conviction on direct appeal.¹ The remittitur issued in October 1997.

On August 4, 1998, appellant filed a post-conviction petition for a writ of habeas corpus in the district court.² The State opposed the

¹Tinch v. State, 113 Nev. 1170, 946 P.2d 1061 (1997).

²Appellant was represented by counsel in the first post-conviction proceedings.

petition. Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On February 10, 1999, the district court denied the petition. This court affirmed the order of the district court on appeal.³

On October 18, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. 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 February 4, 2005, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition approximately seven years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus and because the grounds for relief in the 2004 petition were substantially raised on direct appeal.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶

In an attempt to excuse his procedural defects, appellant argued that two of the claims raised on direct appeal were not federalized and that he needed to file the instant petition in order to exhaust state remedies. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to

³Tinch v. State, Docket No. 34577 (Order of Affirmance, November 6, 2000).

⁴See NRS 34.726(1).


⁵See NRS 34.810(1)(b)(2), (2).

⁶See NRS 34.726(1); NRS 34.810(1)(b), (3).


demonstrate good cause to excuse his procedural defects.⁷ Failure to exhaust state remedies is not good cause. 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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

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

⁷See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).