

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCEL THOMPSON A/K/A MARCEL
DE CAMBRE THOMPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44707

FILED

APR 21 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 dismissing a post-conviction petition for a writ of habeas corpus and denying a motion for the appointment of counsel. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On July 19, 2004, the district court convicted appellant, pursuant to a jury verdict, of four counts of sexual assault. The district court sentenced appellant to serve four consecutive terms of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's appeal from the judgment of conviction.¹ The remittitur issued on January 9, 1996.

On May 9, 1996, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel, and post-conviction counsel filed supplemental documents. The State opposed the petition. On July 21, 1998, the district

¹Thompson v. State, Docket No. 26129 (Order Dismissing Appeal, December 19, 2005).

court denied the petition. This court dismissed appellant's subsequent appeal.²

On October 4, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus. In the 1999 petition, appellant claimed that the indictment was defective and that his counsel were ineffective. Appellant stipulated to the voluntary dismissal of the petition on the ground that his petition was successive and in violation of NRS chapter 34. The district court dismissed the petition pursuant to the stipulation. No appeal was taken.

On April 28, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. In his petition, appellant repeated his allegations from his 1999 petition that the indictment was defective. Appellant additionally filed a motion for the appointment of counsel. 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 November 19, 2004, the district court dismissed appellant's petition and denied his motion for the appointment of counsel. This appeal followed.³

Appellant filed his petition more than eight 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

²Thompson v. Warden, Docket No. 32894 (Order Dismissing Appeal, July 7, 2000).

³Based upon our review of the record, we conclude that the district court did not abuse its discretion in denying appellant's motion for the appointment of counsel. See NRS 34.750.

⁴See NRS 34.726(1).

because he had previously filed a post-conviction petition for a writ of habeas corpus in 1996 and that petition was decided on the merits and because he had previously filed a post-conviction petition for a writ of habeas corpus in 1999 that was voluntarily dismissed.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 the "preparers" of his previous petition failed to raise the grounds and impeded him from doing so by failing to inform him of the omission. Appellant also claimed that his attorney was ineffective for failing to inform him that the indictment was defective.

Based upon our review of the record on appeal, we conclude that the district court did not err in concluding that appellant failed to demonstrate good cause to excuse his procedural defects. Appellant's claim challenging the indictment was reasonably available within the period for filing a timely habeas corpus petition.⁷ Poor assistance from an inmate law clerk does not amount to good cause to excuse the procedural defects.⁸ Ineffective assistance of post-conviction counsel is not good cause in the instant case because the appointment of counsel in the prior post-conviction proceedings was not statutorily or constitutionally required.⁹

⁵See NRS 34.810(1)(b)(2), (2).

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

⁷See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).


⁸See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).


⁹See Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997); McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996).

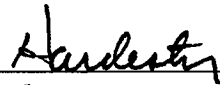
Therefore, we affirm the order of the district court dismissing appellant's petition as procedurally barred.

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Jerome Polaha, District Judge
Marcel Thompson
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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