

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN CHARLES HART,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44776

FILED

JUN 22 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 Stephen Hart's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On June 18, 1998, the district court convicted Hart, pursuant to a jury verdict, of one count of first-degree kidnapping with the use of a deadly weapon, one count of assault with the use of a deadly weapon, and three counts of sexual assault with the use of a deadly weapon. The district court sentenced Hart to serve multiple consecutive and concurrent terms totaling two consecutive terms of life in the Nevada State Prison with the possibility of parole after five years, plus two consecutive terms of life with the possibility of parole after ten years. This court dismissed Hart's appeal from his judgment of conviction and sentence.¹ The remittitur issued on March 28, 2000.

¹Hart v. State, Docket No. 32651 (Order Dismissing Appeal, March 2, 2000).

On October 16, 2000, Hart filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Hart or to conduct an evidentiary hearing. On January 18, 2001, the district court denied Hart's petition. This court affirmed the order of the district court on appeal.²

On December 8, 2004, Hart filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Hart filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Hart or to conduct an evidentiary hearing. On March 25, 2005, the district court denied Hart's petition. This appeal followed.

Hart filed his petition more than four years after this court issued the remittitur from his direct appeal. Thus, Hart's petition was untimely filed.³ Moreover, his petition was successive because he had previously filed a petition for a writ of habeas corpus.⁴ Hart's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

²Hart v. State, Docket No. 37376 (Order of Affirmance, May 30, 2002).

³See NRS 34.726(1).

⁴See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁵See NRS 34.726(1); NRS 34.810(1)(b),(3).

In an attempt to excuse his procedural defects, Hart argued 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 34.360.⁶ Additionally, Hart stated that the instant petition is an attempt to exhaust state remedies pursuant to an order of the federal district court. Finally, Hart asserted that the failure to consider his claims would result in a fundamental miscarriage of justice because he is actually innocent.

We conclude that the district court properly denied Hart's petition as procedurally barred. Despite Hart's assertion to the contrary, his petition challenged the validity of his conviction and is therefore subject to the procedural requirements of NRS chapter 34.⁷ Further, Hart's pursuit of federal habeas relief does not constitute good cause to overcome an untimely and successive petition.⁸ Finally, Hart did not establish that the failure to consider the merits of his petition would result in a fundamental miscarriage of justice, as his claim of actual innocence is not credible.⁹ We therefore affirm the order of the district court.

⁶See NRS 34.720.


⁷See NRS 34.724(2)(b).

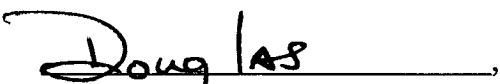
⁸See Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989).

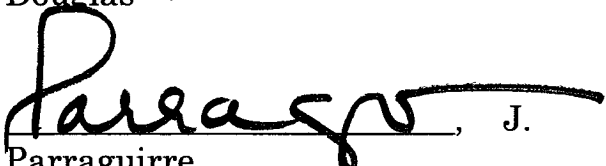
⁹See Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Hart 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.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Sally L. Loehrer, District Judge
Stephen Charles Hart
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

¹¹We have reviewed all documents that Hart 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 Hart has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.