

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARMANDO TORRES GONZALES A/K/A
ARMONDO TORRES GONZALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44904

FILED

JUN 16 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF THE SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court dismissing appellant Armando Torres Gonzales' post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On December 5, 2002, the district court convicted Gonzales, pursuant to a jury verdict, of battery with the use of a deadly weapon. The district court sentenced Gonzales to serve a term of 40 to 100 months in the Nevada State Prison. This court affirmed Gonzales' judgment of conviction and sentence on appeal.¹ The remittitur issued on July 1, 2003.

On March 8, 2004, Gonzales 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 Gonzales or to conduct an evidentiary hearing. On August 13, 2004, the district court

¹Gonzales v. State, Docket No. 40781 (Order of Affirmance, June 6, 2003).

dismissed Gonzales' petition. On appeal, this court affirmed the order of the district court.²

On February 25, 2005, Gonzales filed a second 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 Gonzales or to conduct an evidentiary hearing. On March 2, 2005, the district court dismissed Gonzales' petition. This appeal followed.

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

In an attempt to excuse his procedural defects, Gonzales argued that he recently gained the assistance of an inmate law clerk. However, inadequate legal assistance does not constitute good cause to

²Gonzales v. State, Docket No. 44018 (Order of Affirmance, January 20, 2005).

³See NRS 34.726(1).


⁴See NRS 34.810(1)(b)(2),(2).

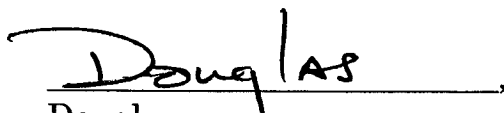
⁵See NRS 34.726(1); NRS 34.810(1)(b),(3).


excuse an untimely and successive petition,⁶ and we therefore conclude that Gonzales' petition was procedurally barred.⁷

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Gonzales is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

⁶See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

⁷We note that the district court erroneously reached the merits of Gonzales' petition without referencing the procedural defects. The district court reached the correct result, however, in denying Gonzales relief.

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

⁹We have reviewed all documents that Gonzales 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 Gonzales 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.

cc: Hon. John P. Davis, District Judge
Armando Torres Gonzales
Attorney General Brian Sandoval/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk