

IN THE SUPREME COURT OF THE STATE OF NEVADA

URICOS LAVELLE CAMPBELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44942

FILED

JUN 16 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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On May 23, 1997, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit murder, two counts of assault with a deadly weapon, and one count of second degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of ten to twenty-five years in the Nevada State Prison for murder. The terms for the remaining counts were imposed to run concurrently. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on November 9, 1999.

On May 30, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed post-conviction

¹Campbell v. State, Docket No. 30486 (Order Dismissing Appeal, October 12, 1999).

counsel to assist appellant, and counsel filed a supplement to the petition. The district court heard arguments from the parties, and on July 5, 2001, the district court denied appellant's petition. This court affirmed the order of the district court on appeal.²

On December 4, 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. Appellant filed a response, to which the State replied. 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 March 14, 2005, the district court denied appellant's petition. This appeal followed.

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

²Campbell v. State, Docket No. 38268 (Order of Affirmance, December 4, 2002).

³See NRS 34.726(1).

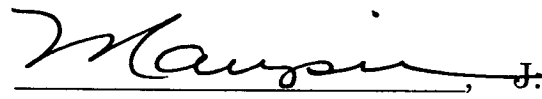
⁴See NRS 34.810(1)(b)(2); (2). Appellant's petition was successive because several of the claims were previously litigated on direct appeal and in the first post-conviction petition for a writ of habeas corpus. To the extent that appellant raised any new claims, those claims were an abuse of the writ because they could have been raised earlier.

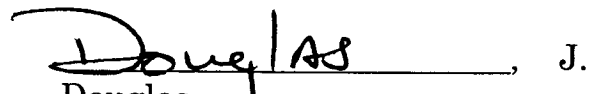
⁵See NRS 34.726(1); NRS 34.810(1)(b); (3).

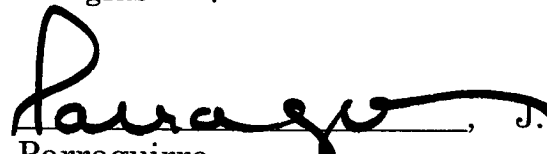
In an attempt to excuse his procedural defects, appellant argued that he was required to file his petition in order to exhaust state remedies. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause to excuse his procedural defects.⁶ Filing a petition for the purpose of exhaustion is not good cause. Thus, 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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Maupin


Douglas


Parraguirre

⁶See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Joseph T. Bonaventure, District Judge
Uricos Lavelle Campbell
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk