

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEONARD ARTHUR WINFREY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45193

FILED

JUL 22 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; Donald M. Mosley, Judge.

On December 20, 1995, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit murder, two counts of first degree murder with the use of a deadly weapon, and one count of possession of a stolen vehicle. The district court sentenced appellant to serve in the Nevada State Prison two consecutive terms of life with the possibility of parole for one murder count, two consecutive terms of life without the possibility of parole for the second murder count, and a total of sixteen years for the remaining counts. This court affirmed appellant's judgment of conviction on appeal.¹ The remittitur issued on May 28, 1998.

On April 29, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Greene v. State, 113 Nev. 157, 931 P.2d 54 (1997) (consolidated appeal with co-defendant Travers Greene).

State opposed 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 August 24, 1999, the district court denied appellant's petition. This court affirmed the order of the district court on appeal.²

On January 19, 2005, appellant filed a second proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition arguing that it was untimely filed and successive. Moreover, the State specifically pleaded laches. 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 April 13, 2005, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition almost seven 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 Further, because the State specifically pleaded laches, appellant was required to overcome the

²Winfrey v. State, Docket No. 34799 (Order of Affirmance, December 12, 2001).

³See NRS 34.726(1).

⁴See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant raised both new and successive claims in the 2005 petition.

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

presumption of prejudice to the State.⁶ A petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice.⁷

In an attempt to excuse his procedural defects, appellant argued that he had good cause because the federal district court had entered an order dismissing a federal habeas corpus petition without prejudice for appellant to exhaust state remedies. Appellant further appeared to argue that he was actually innocent.

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition. Appellant failed to demonstrate that an impediment external to the defense prevented him from complying with the procedural requirements of NRS chapter 34.⁸ Appellant further failed to demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice because appellant failed to demonstrate that he was actually innocent of the offenses.⁹ Finally, appellant failed to overcome the presumption of prejudice to the State. Therefore, we affirm the order of the district court dismissing appellant's petition.

⁶See NRS 34.800(2).


⁷Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).


⁸See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

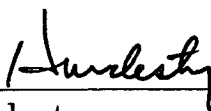
⁹See Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001); Mazzan, 112 Nev. at 848, 921 P.2d at 922; see also Murray v. Carrier, 477 U.S. 478, 496 (1986).

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. Donald M. Mosley, District Judge
Leonard Arthur Winfrey
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).