

IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN C. DANIELS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45257

FILED

JUL 28 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; John S. McGroarty, Judge.

On December 22, 1995, the district court convicted appellant, pursuant to a jury verdict, of two counts of first degree murder with the use of a deadly weapon and two counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve four consecutive terms of life in the Nevada State Prison without the possibility of parole and concurrent terms totaling thirty years. This court affirmed appellant's judgment of conviction on direct appeal.¹ The remittitur issued on April 21, 1998.

On March 19, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On April 21, 1999, the State filed an opposition. 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 September 10, 1999,

¹Daniels v. State, 114 Nev. 261, 956 P.2d 111 (1998).

the district court denied appellant's petition. This court affirmed the order of the district court on appeal.²

On August 19, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that the petition was untimely filed and successive. Moreover, the State specifically pleaded laches. Appellant filed a response. 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 20, 2005, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than six 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 presumption of prejudice to the State.⁶

In an attempt to excuse his procedural defects, appellant argued that he had good cause because he was required to exhaust state remedies for the purposes of federal habeas corpus review. Appellant

²Daniels v. State, Docket No. 35002 (Order of Affirmance, March 27, 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); NRS 34.810(3).

⁶See NRS 34.800(2).

further argued that he had good cause to excuse his procedural defects because of an alleged error relating to his first post-conviction petition. He claimed that the State's opposition was filed on March 22, 2000, and that the district court denied his petition on April 4, 2000, without giving him an opportunity to file a response to the opposition pursuant to NRS 34.750(4). He further claimed that he was improperly excluded from a hearing on the petition.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Filing a petition for the purpose of exhausting state remedies does not excuse an untimely and successive habeas corpus petition.⁷ Appellant's claims relating to the first petition are without merit and did not excuse his procedural defects.⁸ The State did not file a motion to dismiss the petition, and thus, any responsive pleading required the permission of the court.⁹ Further, appellant was required to state on the face of the petition any good cause arguments.¹⁰ Even assuming that appellant was entitled to file a response, the record belies appellant's claim that he was not provided an adequate opportunity to file a response. The State opposed the first petition on April 21, 1999, and the district court did not have a

⁷See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁸To the extent that appellant argued that Nevada applies procedural bars inconsistently, this argument does not amount to good cause to excuse the procedural defects.


⁹See NRS 34.750(5); compare NRS 34.750(4).


¹⁰See State v. Haberstroh, 119 Nev. 173, 180-81, 69 P.3d 676, 681-82 (2003) (recognizing that NRS chapter 34 requires a demonstration of good cause on the face of the petition).

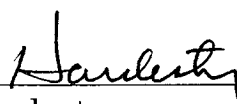
hearing on the petition until May 26, 1999.¹¹ Thus, appellant had an ample opportunity to submit a responsive pleading. The district court did not conduct an improper ex-parte evidentiary hearing on the first petition because no evidence or arguments were presented at the hearing; rather, the hearing on the first petition was limited to the district court setting forth the reasons for denying the petition.¹² Finally, appellant failed to overcome the presumption of prejudice to the State. Therefore, 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.¹³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

¹¹We note that appellant indicates that the State's response was filed in March 2000. However, the first post-conviction petition was litigated in the district court in 1999. This court is unable to discern where appellant arrived at the dates he set forth in his petition.

¹²See Gebbers v. State, 118 Nev. 500, 50 P.3d 1092 (2002).

¹³See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. John S. McGroarty, District Judge
Jonathan C. Daniels
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk