

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDMUND NORMAN CONCEPCION,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45342

FILED

SEP 20 2005

ORDER OF AFFIRMANCE

JANE ITE 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's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

On June 21, 2004, the district court convicted appellant, pursuant to an Alford¹ plea, of two counts of sexual assault of a minor under the age of sixteen years. The district court sentenced appellant to serve two consecutive terms of five to twenty years in the Nevada State Prison. Appellant did not file a direct appeal.

On July 1, 2004, appellant 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 appellant or to conduct an evidentiary hearing. On December 7, 2004, and December 21, 2004, the district court entered orders denying appellant's petition. Appellant did not file an appeal from either order.

¹North Carolina v. Alford, 400 U.S. 25 (1970).

On March 23, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition and appellant filed a reply to the 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 May 23, 2005, the district court denied appellant's petition. This appeal followed.

Appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.² Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.³

Appellant argued that his procedural defect should be excused because he was and continues to be incompetent. Appellant further asserted that when he filed his first petition he did not have access to a law library or a law clerk to assist in the preparation of that petition. Appellant failed to demonstrate good cause for the filing of a successive petition.⁴ Accordingly, we conclude that the district court did not err in denying the petition as successive.

Appellant also argued that he should be able to file a successive petition because the district court denied him the opportunity

²See NRS 34.810(2).

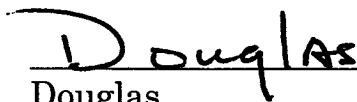
³See NRS 34.810(3).

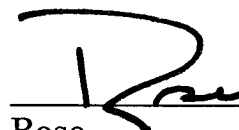
⁴See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that petitioner's claim of organic brain damage, borderline mental retardation and reliance on assistance of inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive post-conviction petition).

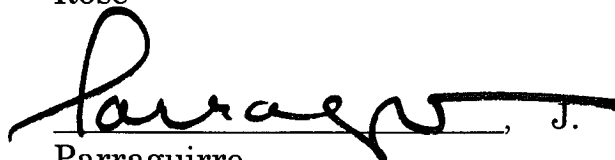
of appealing from the denial of his first petition. Appellant failed to demonstrate good cause for the filing of a successive petition. Accordingly, we conclude that the district court did not err in denying the petition as successive.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

cc: Hon. Valorie Vega, District Judge
Edmund Norman Concepcion
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).