

IN THE SUPREME COURT OF THE STATE OF NEVADA

LLOYD ASKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45535

FILED

NOV 07 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. Bloom*
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. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On September 18, 1998, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. On appeal, this court affirmed the conviction, but reversed the sentence and remanded for a new penalty hearing.¹ After the second penalty hearing, on July 11, 2000, appellant was again sentenced to two consecutive terms of life in prison without the possibility of parole. This court affirmed the judgment of conviction on appeal.² The remittitur issued on December 11, 2001.

¹Askins v. State, Docket No. 33207 (Order of Remand, January 26, 2000).

²Askins v. State, Docket No. 36568 (Order of Affirmance, November 13, 2001).

On February 12, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied the petition. This court affirmed the order of the district court on appeal.³

On December 22, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 dismissed appellant's petition. This appeal followed.

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

³Askins v. State, Docket No. 37677 (Order of Affirmance, February 8, 2002). Appellant was represented by counsel in the appeal.

⁴See NRS 34.726(1).


⁵See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁶See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

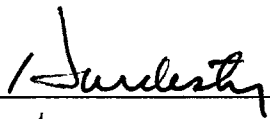
Appellant failed to demonstrate that an impediment external to the defense prevented him from raising all of his claims for relief in a timely, first petition.⁷ Therefore, we affirm the order of the district court.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Steven P. Elliott, District Judge
Lloyd Askins
Attorney General
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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

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

⁹On September 21, 2005, the clerk of the district court filed a motion for an extension of time to file the record on appeal. Good cause appearing, we grant the motion of the clerk of the district court. We note that the record on appeal was filed in this court on October 5, 2005.