

IN THE SUPREME COURT OF THE STATE OF NEVADA

LESLIE BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45596

FILED

OCT 27 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 November 30, 1993, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's appeal from the judgment of conviction.¹ Appellant unsuccessfully sought post-conviction relief.²

On April 4, 2005, 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

¹Brown v. State, Docket No. 26240 (Order Dismissing Appeal, May 26, 1995).

²Brown v. State, Docket No. 27318 (Order Dismissing Appeal, November 5, 1997).

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 July 20, 2005, the district court denied appellant's petition. This appeal followed.

Appellant filed her petition approximately ten years after appellant voluntarily dismissed her direct appeal. Thus, appellant's petition was untimely filed.³ Moreover, appellant's petition was successive because she had previously filed and had considered on the merits 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

Appellant did not attempt to excuse her procedural defects or overcome the presumption of prejudice to the State. Thus, we conclude that the district court did not err in determining that appellant's petition was procedurally barred.


³See NRS 34.726(1). When a timely appeal is voluntarily dismissed by the parties, no remittitur is issued; therefore, the one-year period for filing a post-conviction habeas corpus petition under NRS 34.726(1) commences from the date of this court's order dismissing the appeal.

⁴See NRS 34.810(2).

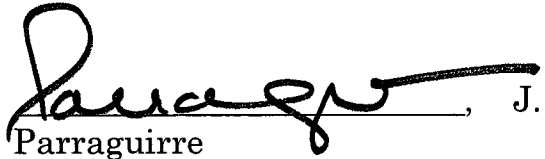
⁵See NRS 34.726(1); NRS 34.810(3).

⁶See NRS 34.800(2).

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.

 _____, J.
Douglas

 _____, J.
Rose

 _____, J.
Parraguirre

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

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