

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM GARDNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45689

FILED

NOV 28 2005

ORDER OF AFFIRMANCE

JANEITE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
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. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On March 11, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of offering, attempting, committing an unauthorized act relating to a controlled substance in violation of NRS 453.321 and one count of conspiracy to commit burglary in district court case number CR3741. The district court sentenced appellant to serve a term of twenty-eight to seventy-two months in the Nevada State Prison for the controlled substance count and a concurrent term of one year for the conspiracy count. No direct appeal was taken. Appellant unsuccessfully sought relief from his conviction by way of a motion to correct an illegal sentence.¹

On May 5, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Gardner v. State, Docket No. 44522 (Order of Affirmance, May 19, 2005).

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 June 23, 2005, and on July 1, 2005, the district court entered written orders denying appellant's petition. This appeal followed.

Appellant filed his petition more than one year after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³ The district court erroneously denied the petition on the merits without addressing the procedural bar. Nevertheless, we affirm the decision to deny the petition because the district court reached the correct result.⁴

In an attempt to demonstrate cause for the delay, appellant argued that he had discovered that not all of his grounds had been considered in a petition that preceded entry of the 2004 judgment of conviction and related to a 2002 judgment of conviction that was vacated in the instant case.⁵ Appellant further appeared to claim that he had good

²See NRS 34.726(1).

³See id.

⁴See Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963).

⁵The record reveals that appellant originally entered a guilty plea to one count of offering, attempting or committing an unauthorized act relating to manufacture or compounding a controlled substance in violation of NRS 453.322 and one count of conspiracy to commit burglary. The judgment of conviction was entered on March 14, 2002. Appellant
continued on next page . . .

cause because this court in denying an original petition instructed him to file a post-conviction petition for a writ of habeas corpus in the district court.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Appellant failed to demonstrate that an impediment external to the defense prevented him from filing a timely petition.⁶ First, because he successfully obtained relief from the 2002 judgment of conviction, any errors relating to the petition challenging the 2002 judgment of conviction do not provide good cause for a late petition in the instant case. Second, this court's instruction to appellant in the original habeas corpus proceeding that a post-conviction petition for a writ of habeas corpus should be filed in the district court in the first instance did not provide good cause as this court specifically stated that it expressed no opinion as to whether appellant would be able to satisfy the procedural requirements

. . . continued


filed a post-conviction petition for a writ of habeas corpus challenging the validity of the 2002 judgment of conviction, and the district court allowed appellant to withdraw his guilty plea.

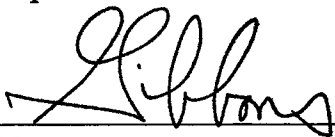
⁶See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

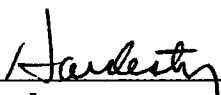
of NRS chapter 34.⁷ Finally, appellant did not demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice.⁸

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

⁷See Gardner v. State, Docket No. 44857 (Order Denying Petition, April 1, 2005).

⁸See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996) (stating that a petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice).

⁹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. John P. Davis, District Judge
William Gardner
Attorney General George Chanos/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk