

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEL BURKETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45769

FILED

NOV 15 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; Michelle Leavitt, Judge.

On July 29, 1981, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon, one count of first degree kidnapping with the use of a deadly weapon, and two counts of sexual assault. The district court sentenced appellant to serve a period totaling two consecutive terms of life in the Nevada State Prison with the possibility of parole and fixed terms totaling thirty years. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on May 10, 1983.

On August 21, 1986, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. The district court denied the petition. This court dismissed appellant's subsequent appeal.²

¹Burkett v. State, Docket No. 13600 (Order Dismissing Appeal, April 21, 1983).

²Burkett v. Warden, Docket No. 19446 (Order Dismissing Appeal, November 21, 1989).

On February 2, 1994, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. In his petition, appellant alleged that there was a discrepancy between the district court's oral pronouncement of his sentence and the written judgment of conviction. On February 28, 1994, the district court corrected the error and filed an amended judgment of conviction.

On June 7, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On August 18, 1999, the district court denied appellant's petition. This court affirmed the order of the district court.³

On November 19, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On February 14, 2002, the district court denied appellant's petition. On appeal, this court reversed and remanded the case to the district court on the sole issue of whether appellant was denied certification pursuant to NRS 213.1214 only because he was housed outside of Nevada and not under observation by a Nevada institution.⁴ On May 14, 2003, the district court denied appellant's claim on remand.

On February 19, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On

³Burkett v. State, Docket No. 34767 (Order of Affirmance, July 10, 2001).

⁴Burkett v. State, Docket No. 39400 (Order of Reversal and Remand, February 6, 2003).

May 15, 2003, the district court denied appellant's petition. This court affirmed the order of the district court on appeal.⁵

On September 1, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On November 1, 2004, the district court denied the petition. No appeal was taken.

On May 13, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a reply. 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 25, 2005, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than twenty-two years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁶ Moreover, appellant's petition was successive.⁷ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁸

Appellant argued that his sentences were unconstitutional because the jury was denied the opportunity to make a finding on the charges of sexual assault and first degree kidnapping due to an alleged

⁵Burkett v. State, Docket No. 41504 (Order of Affirmance, March 5, 2004).

⁶See NRS 34.726(1).

⁷See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁸See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

stipulation by his trial counsel and the State to the facts of the crimes of sexual assault and first degree kidnapping. In an attempt to excuse his procedural defects, appellant argued that he could not have raised this claim until the United States Supreme Court decided Blakely v. Washington.⁹

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. The holding in Blakely is inapposite, and therefore, it does not provide good cause for appellant's extremely tardy filing.¹⁰ The district court imposed sentences within the ranges permitted by the jury's verdicts.¹¹ Appellant's claim of ineffective assistance of counsel was reasonably available to appellant to raise within the statutory time limit.¹² Therefore, we affirm the order of the district court.

⁹542 U.S. 296 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant).

¹⁰See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

¹¹1967 Nev. Stat., ch. 211, § 59, at 470-71 (NRS 200.380); 1977 Nev. Stat., ch. 598, § 3, at 1626-27 (NRS 200.366); 1973 Nev. Stat., ch. 798, § 6, at 1804-05 (NRS 200.320).


¹²See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003) (holding that all claims reasonably available within the one year deadline must be raised in a timely petition).

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.¹⁴

 _____, C.J.

Becker

 _____, J.

Gibbons

 _____, J.

Hardesty

cc: Hon. Michelle Leavitt, District Judge
Joel Burkett
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

¹⁴We 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.