

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD T. ALLGOOD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45900

FILED

FEB 10 2006

JANET R. BILGOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from and order of the district court denying appellant's post-conviction petition for writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On July 22, 1997, the district court convicted appellant, pursuant to a jury verdict, of 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 with the possibility of parole. Appellant's notice for direct appeal was untimely, and this court dismissed the appeal for lack of jurisdiction.¹

On July 14, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied the petition on October 2, 1998. This court affirmed the district court's denial.²

¹Allgood v. State, Docket No. 31111 (Order Dismissing Appeal, November 7, 1997).

²Allgood v. State, Docket No. 33139 (Order of Affirmance, October 9, 2000).

On April 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, arguing that the petition was untimely filed 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 August 18, 2005, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately eight years after the judgment of conviction was entered. Thus, appellant's petition was untimely filed.³ 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.⁴ Appellant's petition was also an abuse of the writ because it raised new claims that could have been raised in his earlier petition.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁷

In an attempt to excuse his procedural defaults, appellant argued that his petition was untimely filed because the United States District Court ordered him to return to state court to exhaust his state

³See NRS 34.726(1).

⁴See NRS 34.810(2).

⁵See id.

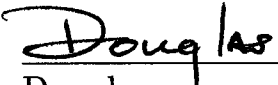
⁶See NRS 34.726(1); NRS 34.810(3).


⁷See NRS 34.800(2).


claims. 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 good cause to excuse the procedural defaults and failed to overcome the presumption of prejudice to the State.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.

 _____, J.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

cc: Honorable Jackie Glass, District Judge
Donald T. Allgood
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); see also Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989).

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