

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL LOUIS QUARANTO, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45987

FILED

JAN 13 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ribaud*
CHIEF 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. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On July 10, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of first degree kidnapping and one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole for the kidnapping count and two consecutive terms of twenty-six to one hundred and twenty months for the robbery count. The district court imposed the latter to run concurrently with the former. No direct appeal was taken.

On May 20, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On July 30, 2004, the district court denied appellant's petition. No appeal was taken.

On July 18, 2005, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss 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 September 28, 2005, the district court dismissed appellant's petition. This appeal followed.

Preliminarily, we note that appellant failed to verify his petition. An unverified petition is not cognizable in the district court.¹ Because appellant's petition was untimely filed, as discussed below, we conclude that the district court did not abuse its discretion in dismissing the petition without providing an appellant an opportunity to cure the defect.²

Additionally, as a separate and independent ground to deny relief, we note that appellant's petition was procedurally barred. Appellant filed his petition more than two years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus and that petition was considered on the merits.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ A petitioner

¹See NRS 34.730; Sheriff v. Scalio, 96 Nev. 776, 616 P.2d 402 (1980); Sheriff v. Chumphol, 95 Nev. 818, 603 P. 2d 690 (1979).

²See Miles v. State, 120 Nev. 383, 91 P.3d 588 (2004) (recognizing that it would be an abuse of discretion to deny a timely-filed, but unverified petition without affording the petitioner an opportunity to cure the defect).

³See NRS 34.726(1).

⁴See NRS 34.810(2).

⁵See NRS 34.726(1); NRS 34.810(3).

may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice.⁶

Appellant did not attempt to demonstrate good cause to excuse his procedural defects. Rather, appellant claimed that the procedural requirements applicable to a post-conviction petition for a writ of habeas corpus did not apply to him because he was seeking a petition pursuant to NRS 34.500. Appellant further argued that he was actually innocent of kidnapping.

Because appellant challenged the validity of his judgment of conviction, the procedural requirements set forth in NRS chapter 34 that relate to the filing of a post-conviction petition for a writ of habeas corpus were applicable to the petition.⁷ Further, appellant failed to demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice because appellant failed to demonstrate that he was actually innocent of all of the charges foregone by the State in the plea bargaining process.⁸ Thus, we conclude that the district court did not err in determining that the petition was procedurally barred.

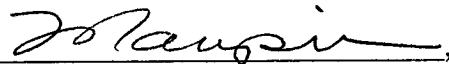
⁶Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).


⁷See NRS 34.720(1); NRS 34.724(1).

⁸See Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan, 112 Nev. at 842, 921 P.2d at 922; see also Bousley v. United States, 523 U.S. 614 (1998) (recognizing that actual innocence in a case involving a guilty plea requires that the petitioner demonstrate that he is actually innocent of more serious charges foregone by the State in the course of plea bargaining).

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.

Maupin

_____, J.

Gibbons

_____, J.

Hardesty

cc: Hon. Michelle Leavitt, District Judge
Daniel Louis Quaranto Jr.
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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