

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAN LANCASTER KEALOHA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45988

FILED

DEC 23 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
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; Donald M. Mosley, Judge.

On April 9, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted battery with substantial bodily harm. The district court sentenced appellant to serve a term of eighteen to forty-eight months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period not to exceed three years. No direct appeal was taken. On October 1, 2003, the district court entered an order revoking appellant's probation, executing the original sentence and amending the judgment of conviction to include 121 days of credit. No appeal was taken.

On July 6, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. On September 27, 2004, the

district court dismissed appellant's petition. This court affirmed the order of the district court on appeal.¹

On April 20, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss 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 August 9, 2005, the district court summarily dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than two years after entry of the judgment of conviction. Appellant's petition was also an abuse of the writ as he raised new claims in the petition.² Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴

In an attempt to demonstrate cause for the procedural defects, appellant argued that he had inadequate access to the law library and persons trained in the law to prepare legal submissions to the court. Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition. Appellant failed to demonstrate that an impediment external to the defense excused

¹Kealoha v. State, Docket No. 44216 (Order of Affirmance, January 20, 2005).

²See NRS 34.810(2).

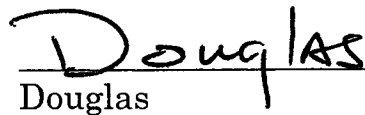
³See NRS 34.726(1); NRS 34.810(3).


⁴See id.

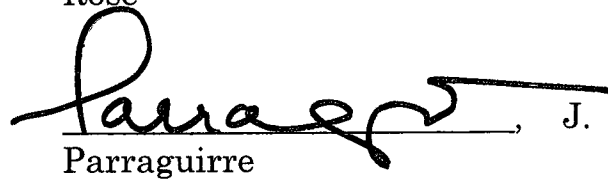
his procedural defects.⁵ Therefore, we conclude that appellant's petition was procedurally time barred and an abuse of the writ.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Douglas

 J.
Rose

 J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Dean Lancaster Kealoha
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).