

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDIE DEAN SANDERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46054

FILED

JAN 11 2006

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; Valerie Adair, Judge.

On September 18, 2001, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree kidnapping, one count of sexual assault with the use of a deadly weapon, one count of attempted sexual assault with the use of a deadly weapon, one count of battery with the intent to commit sexual assault, and one count of battery with the use of a deadly weapon causing substantial bodily harm. The district court sentenced appellant to serve a total of three consecutive terms of life in the Nevada State Prison with the possibility of parole and two consecutive terms of forty-three to one hundred and ninety-two months. The district court also imposed two terms of thirty-five to one hundred and fifty-six months to run concurrently to the terms set forth above. This court affirmed the judgment of conviction on appeal.¹ The remittitur issued on May 18, 2004.

¹Sanders v. State, Docket No. 38542 (Order of Affirmance, April 22, 2004).

On September 23, 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 December 22, 2004, the district court denied the petition. This court affirmed the order of the district court on appeal.²

On May 23, 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 supplemental memorandum to 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 November 22, 2005, the district court denied appellant's petition as successive. This appeal followed.

We note that appellant's petition was untimely filed as it was filed more than one year after this court issued the remittitur from his direct appeal.³ Because appellant's petition was untimely filed and because appellant was required to demonstrate good cause for his delay on the face of the petition, we have applied the procedural time bar to the petition in order to ensure the consistent application of procedural bars.⁴ In addition to the procedural time bar, appellant's petition was successive because he had previously raised claims 1 and 2 on direct appeal, and claims 3-7 and 10 in the prior habeas corpus proceedings, and appellant's

²Sanders v. State, Docket No. 44505 (Order of Affirmance, April 22, 2005).

³See NRS 34.726(1).

⁴See NRS 34.735; see also State v. Haberstroh, 119 Nev. 173, 180-81, 69 P.3d 676, 681-82 (2003) (recognizing that NRS chapter 34 requires a demonstration of good cause on the face of the petition).

petition was an abuse of the writ because he raised new claims for relief—claims 8, and 11-15.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶

In an attempt to excuse his procedural defects, appellant argued that NRS 34.810 should not be applied because it is not applied fairly or consistently. Appellant further claimed that he received poor assistance from an inmate law clerk in preparing his prior post-conviction petition and that the law library does not provide adequate legal assistance.⁷ He further claimed that he has been denied equal protection because he is indigent and that he was not appointed counsel in the prior post-conviction proceeding because he is a minority.

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 excused his procedural defects.⁸ There is no basis for this court not applying the successive procedural bar set forth in NRS 34.810

⁵See NRS 34.810(1)(b)(2); NRS 34.810(2). It appears that appellant has expanded his fair cross section challenge to the jury into several claims in the instant petition.

⁶See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

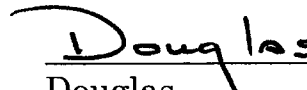
⁷Appellant appeared to suggest that an inmate law clerk signed appellant's name to documents filed in the prior habeas corpus proceedings. Appellant did not identify which documents. Therefore, we conclude that appellant failed to demonstrate that the prior habeas corpus petition was improperly submitted.


⁸See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

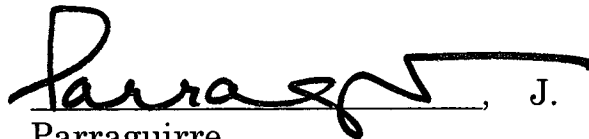
because this court has allegedly failed to apply it consistently in the past.⁹ Poor assistance from an inmate law clerk does not constitute good cause.¹⁰ Finally, appellant has not demonstrated that he has been denied equal protection because he is indigent or a minority; appellant failed to demonstrate that the district court abused its discretion in failing to appoint counsel in the prior habeas corpus proceeding.¹¹ Therefore, we affirm the order of the district court denying appellant's 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.¹² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

⁹See Pellegrini v. State, 117 Nev. 860, 879-886, 34 P.3d 519, 532-536 (2001).

¹⁰See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

¹¹See Gaines v. State, 116 Nev. 359, 371, 998 P.2d 166, 173 (2000); see also NRS 34.750(1).

¹²See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Valerie Adair, District Judge
Eddie Dean Sanders
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk