

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY LEE GOFORTH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46084

FILED

FEB 10 2006

ORDER OF AFFIRMANCE

MANEY M. BLUMING
CLERK OF SUPREME COURT
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Gary Goforth's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On October 19, 2000, the district court convicted appellant, pursuant to a guilty plea, of two counts of possession of a visual presentation depicting sexual conduct of a person under sixteen years of age. The district court sentenced appellant to serve two consecutive terms of twenty-four to seventy-two months in the Nevada State Prison. The sentence was suspended and appellant was placed on probation for five years. On October 4, 2005, appellant was honorably discharged from probation. Appellant did not file a direct appeal.

On April 22, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On January 27, 2004, the district court denied appellant's petition as untimely. This court affirmed the district court's denial of the petition.¹

¹Goforth v. State, Docket No. 42795 (Order of Affirmance, July 27, 2004).

On July 27, 2005, appellant filed a second proper person post-conviction petition for writ of habeas corpus. 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 October 17, 2005, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately five years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Moreover, appellant's petition was an abuse of the writ because he had previously filed a post-conviction habeas corpus petition raising different claims.³ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁴

Appellant made various attempts to demonstrate good cause for his delay. Appellant argued that his trial counsel informed him that he did not have direct appeal or post-conviction appeal rights as a consequence of his guilty plea, and that his untimely petition should be excused because he was under house arrest for more than a year. These issues were previously raised and rejected in appellant's previous petition for a writ of habeas corpus.⁵ The doctrine of the law of the case prevents further litigation of the issues and cannot be avoided by a more precisely

²See NRS 34.726(1).

³See NRS 34.810(1)(b); NRS 34.810(2).

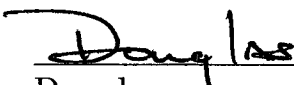
⁴See NRS 34.810(3); NRS 34.726(1).


⁵See Goforth, supra, note 1.


focused and detailed argument.⁶ As such, appellant did not establish good cause to overcome his untimely petition, and thus, the district court did not err in denying this 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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

cc: Hon. Michael A. Cherry, District Judge
Gary Lee Goforth
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).