

IN THE SUPREME COURT OF THE STATE OF NEVADA


ROBERT PAUL SPANGLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46161

**FILED**

APR 13 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's "Request For Submission And Decision Of Pro-Per Petition For Writ Of Habeas Corpus (Post-Conviction) Filed On December 20, 2000." Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On June 11, 1998, the district court convicted appellant, pursuant to a jury verdict, of six counts of sexual assault of a child under the age of fourteen years. The district court adjudicated appellant a habitual felon and sentenced him to serve six consecutive terms of life in the Nevada State Prison without the possibility of parole. This court affirmed appellant's conviction on direct appeal, but remanded for resentencing.<sup>1</sup>

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<sup>1</sup>Spangler v. State, Docket No. 32730 (Order of Remand, January 26, 2000). This court determined that the district court had incorrectly cited to the wrong habitual criminal statute, and that the language in the  
*continued on next page . . .*

On December 20, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750, the district court appointed counsel. Counsel filed a supplemental petition with additional claims. The district court dismissed appellant's petition on February 3, 2003, following an evidentiary hearing. This court affirmed the dismissal of appellant's petition.<sup>2</sup>

On September 22, 2005, appellant filed a "Request For Submission And Decision Of Pro-Per Petition For Writ Of Habeas Corpus (Post-Conviction) Filed On December 20, 2000" in the district court.<sup>3</sup> On September 28, 2005, the district court denied appellant's petition. This appeal followed.

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*... continued*

judgment of conviction implied that appellant was sentenced to life terms for the sexual assaults, followed by life terms for the habitual felon adjudications. The judgment of conviction was amended on March 17, 2000.

<sup>2</sup>Spangler v. State, Docket No. 41064 (Order of Affirmance, August 16, 2005).

<sup>3</sup>Because appellant challenged the validity of his conviction and sentence, we conclude that the district court properly construed appellant's petition as a post-conviction petition for a writ of habeas corpus. See NRS 34.720(1); NRS 34.724.

In his petition, appellant contended that in the evidentiary hearing for his first petition, the district court only considered claims raised by counsel and one of the claims that appellant raised in proper person. Thus, appellant contended that the remaining proper person claims in his earlier petition have not been considered on the merits and should relate back to the earlier petition.

Appellant filed his petition approximately five years and six months after the remittitur issued in his direct appeal. Thus, appellant's petition was untimely.<sup>4</sup> Appellant's petition was also successive because he had previously filed a post-conviction petition for a writ of habeas corpus in which there was a prior determination on the merits.<sup>5</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>6</sup>

Our review of the record on appeal reveals that appellant did not attempt to demonstrate good cause or prejudice. Thus, the petition was procedurally barred, and the district court did not err in denying appellant's petition. Appellant failed to demonstrate that any error

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<sup>4</sup>See NRS 34.726.

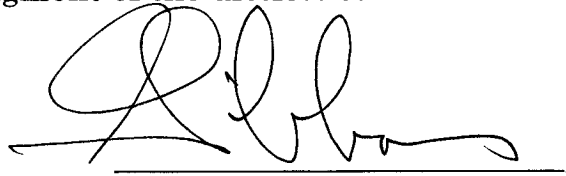
<sup>5</sup>See NRS 34.810(2).

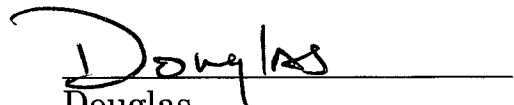
<sup>6</sup>See NRS 34.726; NRS 34.810(3).

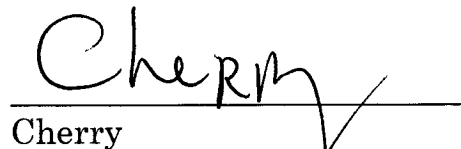
relating to the first habeas corpus proceeding provided good cause and prejudice to excuse his procedural defects in the instant case.<sup>7</sup>

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.<sup>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>9</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

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<sup>7</sup>McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996); see also Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997).

<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>9</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. John P. Davis, District Judge  
Robert Paul Spangler  
Attorney General Catherine Cortez Masto/Carson City  
Nye County District Attorney/Tonopah  
Nye County Clerk