

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD R. GATES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46269

**FILED**

MAR 22 2006

by *[Signature]*  
JANET M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On March 2, 1989, the district court convicted appellant, pursuant to a jury verdict, of two counts of sexual assault of a child under the age of fourteen. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after ten years. This court dismissed appellant's direct appeal from his conviction.<sup>1</sup> The remittitur issued on January 9, 1990.

On December 14, 1990, appellant filed a proper person petition for post-conviction relief in the district court. The State opposed the petition. After holding an evidentiary hearing, the district court

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<sup>1</sup>Gates v. State, Docket No. 20010 (Order Dismissing Appeal, December 20, 1989).

denied the petition. This court dismissed appellant's appeal from the district court's order denying his petition.<sup>2</sup>

Subsequently, appellant filed a proper person post-conviction petition for a writ of habeas corpus in federal district court, claiming he received ineffective assistance of appellate counsel. The federal district court issued an order purporting to stay the federal proceedings to allow appellant to return to state court to exhaust his state remedies on the ineffective assistance of appellate counsel claims, which our review of the record on appeal reveals that appellant had not raised in his prior state court petition for a writ of habeas corpus.

On May 5, 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, arguing the petition was procedurally barred. 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 13, 2005, the district court dismissed appellant's petition as procedurally barred. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of appellate counsel during his direct appeal. Specifically, appellant contended his appellate counsel had failed to include in the direct appeal claims regarding a Miranda<sup>3</sup> violation, insufficient notice of grand jury proceedings, improper admission of prior bad act evidence at trial, and sufficiency of the evidence.

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<sup>2</sup>Gates v. State, Docket No. 27448 (Order Dismissing Appeal, May 6, 1998).

<sup>3</sup>Miranda v. Arizona, 384 U.S. 436 (1966).

Appellant filed his petition more than fifteen years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>4</sup> Moreover, appellant's petition was successive because he had previously filed a petition for post-conviction relief.<sup>5</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>6</sup>

Appellant made no attempt to explain why he failed to raise these claims in his previous petition. Rather, appellant argued that the federal district court's order removed the procedural bars set forth in NRS chapter 34. We disagree. The procedural bars set forth in NRS chapter 34 are mandatory.<sup>7</sup> Appellant failed to demonstrate that an impediment external to the defense excused his failure to bring these claims in his previous state court petition.<sup>8</sup> Accordingly, we conclude appellant has not demonstrated good cause and prejudice sufficient to overcome the procedural bars to the instant petition.

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<sup>4</sup>See NRS 34.726(1).

<sup>5</sup>See NRS 34.810(1)(b)(2); NRS 34.810(2).

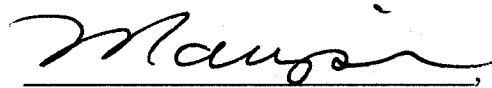
<sup>6</sup>See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(2); NRS 34.810(3).

<sup>7</sup>State v. District Court (Riker), 121 Nev. \_\_\_, \_\_\_, 112 P.3d 1070, 1074 (2005) (citing State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003)).

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

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>9</sup> Accordingly, we

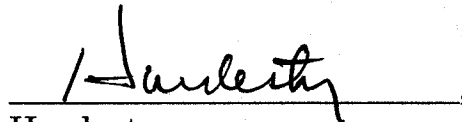
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Jerome Polaha, District Judge  
Richard R. Gates  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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