

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO MERCADO-LEAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46323

FILED

MAR 14 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

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

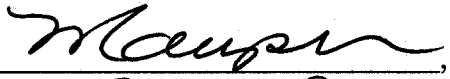
Mercado-Leal contends on appeal that the district court erred by dismissing his untimely and successive habeas petition without conducting an evidentiary hearing. Mercado-Leal argues that an evidentiary hearing was necessary to determine whether (1) he was insane at the time he committed the crime of attempted murder with the use of a deadly weapon, and (2) his petition's procedural defects should be excused because he was "incompetent while in custody to gather investigative and documentary evidence to substantiate his claims within the petitions." Finally, Mercado-Leal claims that he received ineffective assistance of counsel. We disagree with Mercado-Leal's contentions.


We conclude that the district court did not err in dismissing Mercado-Leal's habeas petition without conducting an evidentiary hearing. The district court found that Mercado-Leal's petition was untimely, successive, an abuse of the writ, and "failed to meet his burden of pleading specific facts that demonstrated good cause" to excuse the

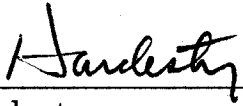
procedural defects.¹ The district court also found Mercado-Leal's claim of insanity and incompetence belied by the record. This court has consistently stated that a habeas petitioner "is not entitled to an evidentiary hearing if the factual allegations are belied or repelled by the record."² Mercado-Leal has not demonstrated, let alone even alleged, that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. And finally, Mercado-Leal has not demonstrated that the district court erred as a matter of law.

Therefore, having considered Mercado-Leal's contentions and concluded that he is not entitled to any relief, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

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

¹See NRS 34.726(1); NRS 34.810(2); State v. Dist. Ct. (Riker), 121 Nev. ___, 112 P.3d 1070 (2005).

²Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004).