

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH RUBEN SANCHEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46492

FILED

APR 21 2006

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On April 10, 2000, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit kidnapping (count 1), one count of first degree kidnapping with the use of a deadly weapon (count 2), one count of first degree murder with the use of a deadly weapon (count 4), one count of conspiracy to commit robbery (count 5), and one count of robbery with the use of a deadly weapon (count 6). The district court sentenced appellant to serve the following terms in the Nevada State Prison: for count 1, a term of thirteen to sixty months; for count 2, two consecutive terms of life with the possibility of parole, to be served concurrently to count 1; for count 4, two consecutive terms of life with the possibility of parole, to be served consecutively to count 2; for count 5, a term of thirteen to sixty months, to be served consecutively to count 4; for count 6, two consecutive terms of thirty-five to one hundred

and fifty-six months, to be served concurrently with count 5.¹ This court affirmed the judgment of conviction on direct appeal.² The remittitur issued on April 2, 2002.

On June 25, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent appellant in the post-conviction proceedings, and counsel filed a supplement to the petition. The State opposed the petition. On April 1, 2003, after conducting an evidentiary hearing, the district court denied appellant's petition. This court affirmed the order of the district court on appeal.³

On July 20, 2005, appellant filed a proper person motion to correct/modify sentence in the district court. The State opposed the motion. On August 12, 2005, the district court denied appellant's motion. This court affirmed the order of the district court on appeal.⁴

On September 19, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. Appellant filed a response.

¹On March 11, 2004, the district court amended the judgment of conviction to reflect that the terms for count 4 were imposed to run concurrently with the terms imposed for count 2 and consecutively to the term imposed for Count 1.

²Sanchez v. State, Docket No. 36051 (Order of Affirmance, March 8, 2002).

³Sanchez v. State, Docket No. 41397 (Order of Affirmance, July 23, 2004).

⁴Sanchez v. State, Docket No. 45846 (Order of Affirmance, December 6, 2005).

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 January 13, 2006, the district court summarily dismissed appellant's petition, and on February 2, 2006, the district court entered specific findings of fact and conclusions of law. This appeal followed.

Appellant filed his petition approximately three and one-half years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁵ Moreover, appellant's petition was successive because several of his claims had been previously litigated and an abuse of the writ because he raised several claims not previously raised.⁶ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁷

In an attempt to excuse his procedural defects, appellant argued that his post-conviction counsel was ineffective for failing to investigate the grounds and call witnesses at the evidentiary hearing. He further appeared to claim that he was raising new claims because he had received ineffective assistance of counsel from trial and appellate counsel. He claimed that his procedural defects should be excused because he was a layman at law, he did not have a complete file, and he needed to

⁵See NRS 34.726(1).

⁶See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant stated that he was re-raising the following claims: (1) his trial counsel was ineffective for failing to call defense witnesses; (2) his appellate counsel was ineffective for failing to confer about the direct appeal issues; (3) insufficient evidence was presented; and (4) jury instruction #27 (premeditation) was in error. Appellant indicated that Grounds 1-8 in his petition were new claims for relief.

⁷See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

raise claims for exhaustion purposes. Finally, appellant claimed that he could not have raised some of the claims earlier as they arose from newly discovered evidence.

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing the petition. Appellant failed to demonstrate that an impediment external to the defense excused his procedural defects.⁸ A claim of ineffective assistance of post-conviction counsel is not good cause in the instant case as appellant did not have the right to the effective assistance of post-conviction counsel in the prior habeas corpus proceeding.⁹ Claims of ineffective assistance of trial and appellate counsel are not good cause as these claims were themselves procedurally defaulted.¹⁰ Appellant's claims of ineffective assistance of trial and appellate counsel were reasonably available to appellant within the one-year period for filing a timely petition.¹¹ Poor assistance in preparing the first petition and failure to receive the entire case file from counsel do not constitute good cause to excuse the procedural defects.¹² Raising claims for purposes of exhaustion is likewise not good cause. Finally, appellant failed to demonstrate that the alleged "newly discovered evidence" was in fact newly discovered or that it was not reasonably

⁸See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁹See Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997); McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996).

¹⁰See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).


¹¹See id.


¹²See Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

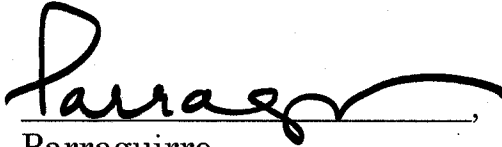
available to appellant within the one-year period for filing a timely habeas corpus petition.¹³ Therefore, we affirm the order of the district court.

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.¹⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Rose


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Lee A. Gates, District Judge
Joseph Ruben Sanchez
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹³See Hathaway, 119 Nev. 248, 71 P.3d 503.

¹⁴See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).