

IN THE SUPREME COURT OF THE STATE OF NEVADA

NARVIEZ V. ALEXANDER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46642

FILED

JUN 12 2006

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying a petition for a writ of error coram nobis. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On January 4, 1995, the district court convicted appellant, pursuant to a guilty plea, of one count of first degree kidnapping with the use of a deadly weapon and four counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling two hundred and ten years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction.¹ The remittitur issued on November 12, 1996.

On May 30, 1996, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On July 29, 1997, the district court, without appointing counsel or conducting an evidentiary hearing, denied appellant's petition. On appeal, this court concluded that the district court erred in denying the petition without first conducting an evidentiary hearing on appellant's claim that trial counsel misinformed him about his

¹Alexander v. State, Docket No. 26624 (Order Dismissing Appeal, October 22, 1996).

ability to withdraw his guilty plea, and consequently, this court remanded the matter to the district court for an evidentiary hearing.² Upon remand, the district court appointed counsel and conducted an evidentiary hearing. The district court entered a final order denying the petition, and this court dismissed the subsequent appeal.³

On April 20, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. On May 9, 2005, the district court denied appellant's motion. This court affirmed the order of the district court on appeal.⁴

On December 7, 2005, appellant filed a petition for a writ of error coram nobis in the district court. The State filed a motion to dismiss the petition. On March 6, 2006, the district court denied the petition. This appeal followed.⁵

In his petition, appellant claimed that his guilty plea was invalid because the district court allegedly participated in the plea negotiations. It appears that appellant further claimed that his trial

²Alexander v. State, Docket No. 29134 (Order of Remand, March 11, 1999).

³Alexander v. State, Docket No. 35153 (Order Dismissing Appeal, April 12, 2000).

⁴Alexander v. State, Docket No. 45385 (Order of Affirmance, September 26, 2005).

⁵In addition to filing his petition for a writ of error coram nobis, appellant filed a motion for reassignment of district court judge. The district court denied the motion. Based upon our review of the record on appeal, we conclude that the district court did not abuse its discretion in denying appellant's motion.

counsel coerced his guilty plea and that his trial counsel misinformed him about his ability to withdraw the guilty plea.

NRS 34.724(2)(b) expressly provides that a post-conviction petition for a writ of habeas corpus "[c]omprehends and takes the place of all other common-law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them." Because appellant challenged the validity of his judgment of conviction, the district court correctly construed the petition to be a post-conviction petition for a writ of habeas corpus.

Appellant filed his petition more than nine years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁶ Moreover, appellant's petition was successive.⁷ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁸ Further, the State specifically pleaded laches, thus requiring appellant to overcome the presumption of prejudice to the State.⁹

⁶See NRS 34.726(1).

⁷See NRS 34.810(2). Appellant's petition was successive because he raised the following claims that had been previously decided against him in the first post-conviction proceeding: (1) his trial counsel coerced his guilty plea, and (2) his trial counsel misinformed him about withdrawal of the plea after entry. Further, appellant's claim that the district court participated in the plea negotiations was considered and rejected on direct appeal. The doctrine of the law of the case prevents further litigation of claims previously considered and rejected by this court. See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

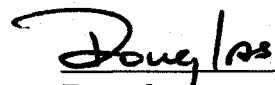
⁸See NRS 34.726(1); NRS 34.810(3).


⁹See NRS 34.800(2).

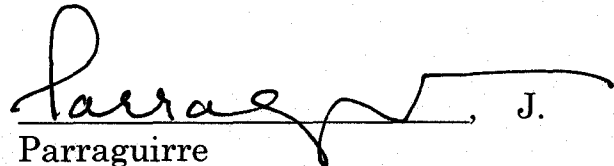
Appellant did not attempt to demonstrate good cause or overcome the presumption of prejudice on the face of the petition. Therefore, we conclude that the district court did not err in denying appellant's petition.¹⁰

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.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

¹⁰We note that the district court denied the petition without providing appellant an opportunity to file a response to the State's motion to dismiss. Because appellant's petition was treated as a post-conviction petition for a writ of habeas corpus, the district court should have provided appellant an opportunity to file a response. See NRS 34.750(4). However, in light of the fact that the claims appellant raised were previously raised and rejected on direct appeal and in the first post-conviction proceedings, we conclude that appellant was not prejudiced by the district court's error. See NRS 178.598.

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Sally L. Loehrer, District Judge
Narviez V. Alexander
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk