

IN THE SUPREME COURT OF THE STATE OF NEVADA

MITCHELL ALLEN BLASCHE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46700

FILED

JUN 30 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 denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

Appellant Mitchell Allen Blasche was originally convicted, pursuant to a jury verdict, of one count of driving under the influence causing death in violation of NRS 484.3795. The district court sentenced Blasche to a prison term of 80 to 200 months. On appeal, this court affirmed the judgment of conviction.¹

Blasche filed a timely post-conviction petition for a writ of habeas corpus with the assistance of counsel. Following an evidentiary hearing, the district court denied the petition. On appeal, this court affirmed the order of the district court.²

On August 31, 2005, Blasche filed a second post-conviction petition for a writ of habeas corpus. In the petition, Blasche stated that he

¹Blasche v. State, Docket No. 37140 (Order of Affirmance, May 18, 2001).

²Blasche v. State, Docket No. 40942 (Order of Affirmance, June 20, 2003).

currently has a federal habeas petition pending that has been stayed so that he can exhaust his state remedies. On September 14, 2005, the State filed a response to the petition and motion to dismiss. Blasche filed a reply on October 4, 2005, and the district court subsequently conducted an evidentiary hearing. The district court thereafter denied the petition.

Initially, we note that Blasche filed his petition more than four years after this court issued the remittitur from his direct appeal. Thus, Blasche's petition was untimely filed.³ Moreover, Blasche's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.⁴ Blasche's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

We conclude that the district court correctly found that Blasche failed to establish good cause for the untimely petition. The petition is therefore procedurally barred, and we conclude that the district court did not err by denying the petition on that basis.⁶ Nonetheless, to the extent that the district court addressed the merits of Blasche's petition we conclude that the district court correctly determined that Blasche's

³See NRS 34.726(1).

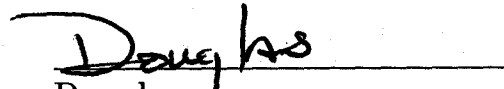
⁴See NRS 34.810(1)(b)(2); (2).

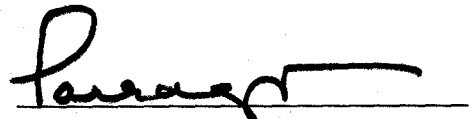
⁵See NRS 34.726(1); NRS 34.810(1)(b); (3).

⁶See generally Harris v. Reed, 489 U.S. 255, 263 (1989) (holding that procedural default does not bar federal review of claim on the merits unless state court rendering judgment relied "clearly and expressly" on procedural bar) (citation omitted).

petition lacked merit, and we affirm the district court's ruling on that separate, independent ground.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Douglas


_____, J.
Parraguirre


_____, Sr. J.
Shearing

⁷See Harris, 489 U.S. at 264 n.10 (holding that as long as the state court explicitly invokes a state procedural bar, “a state court need not fear reaching the merits of a federal claim in an alternative holding.”).

⁸Although this court has elected to file the fast track statement submitted, it is noted that it does not comply with the arrangement and form requirements of the Nevada Rules of Appellate Procedure. See NRAP 32(a). Specifically, the fast track statement is single-spaced. In the future, counsel should double-space the fast track statement, and if necessary, file a motion for leave to file a fast track statement in excess of 10 pages. Counsel is cautioned that failure to comply with the requirements for fast track statements in the future may result in the fast track statement being returned, unfiled, to be correctly prepared. See NRAP 32(c).

The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under general orders of assignment entered January 6, 2006.

cc: Eighth Judicial District Court Dept. 16, District Judge
Michael H. Schwarz
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk