

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIMBLE MCNAIR A/K/A KIMBALL
MCNAIR, MD, II,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46780

FILED

JUN 30 2006

ORDER OF AFFIRMANCE

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

This is a proper person 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.

On May 1, 1989, the district court convicted appellant, pursuant to a jury verdict, of six counts of sexual assault. The district court sentenced appellant to serve four consecutive and two concurrent terms of life in the Nevada State Prison. This court affirmed the judgment of conviction and sentence on appeal.¹ The remittitur issued on June 4, 1992.

On August 12, 1993, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. Appellant filed several

¹McNair v. State, 108 Nev. 53, 825 P.2d 571 (1992).

supplements to the petition. The State opposed the petition. After conducting an evidentiary hearing, the district court denied appellant's petition. This court affirmed the denial on appeal.²

On December 13, 2005, appellant filed a proper person document labeled "First Amendment" petition in the district court. The State opposed the petition and moved to dismiss the petition arguing that the petition was procedurally barred pursuant to NRS chapter 34. Moreover, the State specifically pleaded laches. 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 February 8, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant alleged that his conviction was void because his jury venire did not represent a cross-section of the community. Because the petition challenged the judgment of conviction rather than alleging an unconstitutional prior restraint of appellant's rights, we conclude that the district court did not err in treating the petition as a post-conviction petition for a writ of habeas corpus.³

²McNair v. State, Docket No. 26538 (Order Dismissing Appeal, August 29, 1997).

³See NRS 34.185; NRS 34.724; NRS 34.738.

Appellant filed his petition more than thirteen years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁷

Appellant made no attempt to excuse his procedural defects. Accordingly, we conclude that the district court did not err in denying appellant's petition.

Additionally, as separate and independent grounds for denying relief, appellant was barred by the doctrine of the law of the case from re-raising the issue relating to the jury venire.⁸

⁴See NRS 34.726(1).

⁵See NRS 34.810(2).


⁶See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

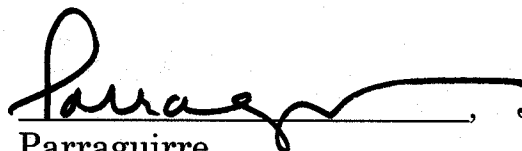
⁷See NRS 34.800(2).

⁸See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, J.
Douglas


_____, J.
Parraguirre


_____, Sr. J.
Shearing

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

¹⁰We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

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
Kimble McNair
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk