

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN BROOKS A/K/A RALPH KEVIN
CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46807

FILED

JUL 14 2006

JANET M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's "motion for production of favorable evidence" and "motion to dismiss prosecution." Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On October 5, 1990, the district court convicted appellant, pursuant to a jury verdict, of two counts of burglary. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve two concurrent terms of life in the Nevada State Prison without the possibility of parole. This court affirmed appellant's conviction on direct appeal.¹ The remittitur issued on January 8, 1992. Appellant

¹Brooks v. State, Docket No. 21722 (Order Dismissing Appeal, December 20, 1991).

unsuccessfully sought post-conviction relief through two proper person petitions for a writ of habeas corpus and a motion to correct illegal sentence.²

On December 20, 2005, appellant filed a proper person "motion of defendant for production of favorable evidence" and "motion to dismiss prosecution and judgement of conviction due to lack of information." The State opposed the motions. The district court determined that the motions challenged the legality of confinement and, as such, should be treated as a petition for a writ of habeas corpus. 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 April 26, 2006, the district court denied appellant's motions. This appeal followed.

We agree with the district court that appellant's motions should be treated as a petition for a writ of habeas corpus.³

²Brooks v. State, Docket No. 43621 (Order of Affirmance, November 3, 2004); Brooks v. State, Docket No. 40941 (Order of Affirmance, January 22, 2004); Brooks v. State, Docket No. 34575 (Order of Affirmance, February 28, 2001).

³See NRS 34.724(2)(b) (stating that a post-conviction petition for a writ of habeas corpus "comprehends and takes the place of all other common-law, statutory or other remedies which have been available for
continued on next page . . .

Appellant filed his petition almost fifteen years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Appellant's petition was also successive because he had previously filed two petitions for a writ of habeas corpus.⁵ Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.⁶ Appellant made no attempt to establish good cause and prejudice. Accordingly, we conclude the district court did not err in dismissing appellant's motions.⁷

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challenging the validity of a conviction or sentence, and must be used exclusively in place of them.").

⁴See NRS 34.726(1).

⁵See NRS 34.726(1); NRS 34.810(1)(b)(2); NRS 34.810(2).

⁶See NRS 34.810(1)(b); NRS 34.810(3).

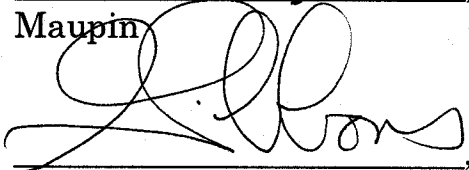
⁷We note that appellant has previously raised the claims underlying his petition, specifically, that the district court lacked jurisdiction to try him because the justice of the peace who conducted his preliminary hearing was not qualified. This court has ruled at least twice that this issue lacked merit. See, e.g., Brooks v. State, Docket No. 40941 (Order of Affirmance, January 28, 2004); Brooks v. State, Docket No. 34575 (Order of Affirmance, February 28, 2001). Appellant was barred by the law of the case from raising this claim again. See Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001).

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.⁸ Accordingly, we

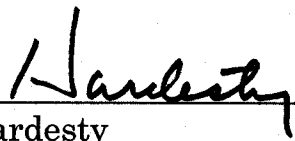
ORDER the judgment of the district court AFFIRMED.⁹



Maupin J.



Gibbons J.



Hardesty J.

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We 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.

cc: Hon. Nancy M. Saitta, District Judge
Kevin Brooks
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk