

IN THE SUPREME COURT OF THE STATE OF NEVADA

OTIS CHARLES BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46810

FILED

JUL 25 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
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. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

On July 7, 1998, the district court convicted appellant, pursuant to a jury verdict, of attempted murder with the use of a deadly weapon, sexual assault, burglary, and robbery with the use of a deadly weapon.¹ The district court adjudicated appellant a habitual criminal on the burglary count, and sentenced appellant to serve terms totaling forty-eight years to life in the Nevada State Prison. This court dismissed appellant's direct appeal from the judgment of conviction.² The remittitur

¹An amended judgment of conviction was entered on July 20, 1998 to correct the date of the jury's verdict from March 30, 1998 to April 30, 1998.

²Brown v. State, Docket No. 32724 (Order Dismissing Appeal, September 16, 1999).

issued on October 12, 1999. Appellant unsuccessfully sought post-conviction relief through a petition for a writ of habeas corpus.³

On November 21, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 5, 2006, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than six 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

In an attempt to excuse his procedural defects, appellant argued that his appellate counsel failed to adequately argue a Batson v. Kentucky⁷ violation in the appeal from the denial of appellant's first state

³Brown v. Warden, Docket No. 40051 (Order of Affirmance, January 7, 2003).

⁴See NRS 34.726(1).

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

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

⁷476 U.S. 79 (1986).

court post-conviction petition for a writ of habeas corpus. We conclude appellant failed to demonstrate good cause sufficient to excuse his procedural defects. Good cause requires the petitioner to demonstrate that some impediment external to the defense caused the failure to comply with the procedural bar.⁸ Ineffective assistance of appellate counsel is generally not external to the defense.

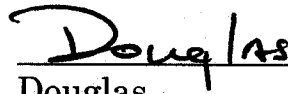
Further, as a separate and independent ground for denying relief, we conclude that appellant's sole claim in the petition, a Batson violation, lacked merit. Appellant failed to demonstrate that the group allegedly excluded from the jury venire was a "distinctive" group in the community, that representation of that group in jury venires was not fair and reasonable in relation to the proportion of members of that group in the community, and that the under-representation of that group in jury venires was due to systemic exclusion of that group in the jury selection process.⁹ Accordingly, we conclude the district court did not err in denying appellant's petition.

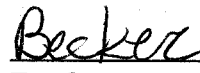
⁸See Murray v. Carrier, 477 U.S. 478, 488 (1986); see also Crump v. Warden, 113 Nev. 293, 302, 934 P.2d 247, 252 (1997).

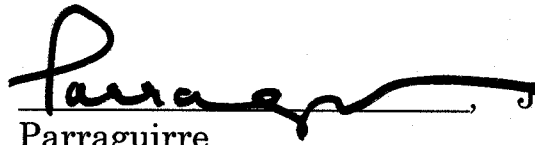
⁹See Duren v. Mississippi, 439 U.S. 357 (1979). We note that appellant failed to provide a transcript of the jury selection proceedings that occurred in his trial.

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

cc: Hon. Andrew J. Puccinelli, District Judge
Otis Charles Brown
Attorney General George Chanos/Carson City
Elko County District Attorney
Elko County Clerk

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).