

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTORIANO GARCIA-LOPEZ A/K/A  
VICTOR LOPEZ-GARCIA A/K/A  
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VICTOR GARCIA A/K/A VICTOR  
LOPEZ A/K/A JUAN RAMOS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46816

**FILED**

JUN 30 2006

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On May 30, 1996, the district court convicted appellant, pursuant to a guilty plea, of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. No direct appeal was taken.

On May 5, 1997, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to assist appellant, and counsel filed a supplement to the petition. The State opposed the petition. On June 17,

1998, after conducting an evidentiary hearing, the district court denied the petition. This court affirmed the order of the district court on appeal.<sup>1</sup>

On December 23, 2005 appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. 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 3, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than nine and one-half years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.<sup>2</sup> Moreover, appellant's petition was successive because he had previously litigated a post-conviction petition for a writ of habeas corpus.<sup>3</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>4</sup>

In an attempt to excuse his procedural defects, appellant argued that procedural bars may not be applied to his petition as they are allegedly inconsistently applied. Appellant further claimed that he was incompetent during the first post-conviction proceeding and was not able

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<sup>1</sup>Garcia-Lopez v. Warden, Docket No. 32717 (Order Dismissing Appeal, September 8, 2000).

<sup>2</sup>See NRS 34.726(1).

<sup>3</sup>See NRS 34.810(2).

<sup>4</sup>See NRS 34.726(1); NRS 34.810(3).

to present all of his claims in that proceeding as a result of his incompetency. Appellant further claimed that the fact that he does not read, speak, write or understand English prevented him from raising all claims in the first post-conviction proceeding as he was deprived of meaningful access to the courts.

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing the petition. Appellant failed to demonstrate that an impediment external excused his procedural defects.<sup>5</sup> The alleged inconsistent application of procedural bars is not good cause to excuse an untimely and successive petition. We note that contrary to appellant's assertion, appellant was determined to be competent during the first post-conviction proceeding, and thus, he failed to demonstrate that his alleged incompetency excused his procedural defects. Further, appellant was provided meaningful access to the courts in the first post-conviction proceeding as he was appointed and represented by counsel in that proceeding.<sup>6</sup> Appellant failed to demonstrate that the alleged language barrier excused his procedural defects in the instant case. Therefore, we affirm the order of the district court dismissing the petition as procedurally barred.

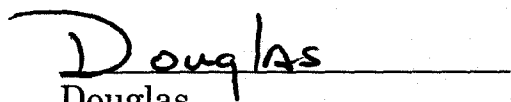
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<sup>5</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>6</sup>We note that an interpreter was present and provided appellant with translation services during the evidentiary hearing on the first post-conviction petition. It further appears from the record that post-conviction counsel utilized an interpreter when meeting with appellant.

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.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, Sr. J.  
Shearing

cc: Hon. Steven P. Elliott, District Judge  
Victoriano Garcia-Lopez  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>7</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>8</sup>The Honorable Miriam Shearing, Senior Justice, participated in the decision of this matter under general orders of assignment entered January 6, 2006.