

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN CARLOS GARCIA A/K/A JUAN
CARLOS JACOBO GARCIA A/K/A
JACOBO JUAN GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46908

FILED

JUN 30 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On March 14, 2003, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit robbery, one count of burglary while in possession of a firearm, and two counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling 132 months to 452 months in the Nevada State Prison. This court affirmed the judgment of conviction on appeal.¹ The remittitur issued on June 22, 2004.

On March 22, 2005, and on May 12, 2005, appellant filed identical proper person post-conviction petitions for writs of habeas corpus

¹Garcia v. State, Docket No. 41001 (Order of Affirmance, May 28, 2004).

in the district court. The State opposed the petitions. On July 21, 2005, the district court denied the petitions, and service of notice of entry was performed by the clerk of the district court on July 26, 2005. No appeal was taken.

On November 8, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. Appellant filed a response. 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 March 6, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition approximately seventeen months after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.² Moreover, appellant's petition was successive because he had previously filed post-conviction petitions for writs of habeas corpus.³ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁴

²See NRS 34.726(1).

³See NRS 34.810(1)(b)(2); NRS 34.810(2). We note that the November 8, 2005 petition raised identical claims to those raised in the two prior petitions considered and decided on the merits by the district court.

⁴See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

In an attempt to excuse his procedural defects, appellant claimed that he should have his November 2005 petition reviewed on the merits because he did not appeal from the decision in the first post-conviction proceeding. Specifically, appellant claimed that he did not appeal the decision in the first post-conviction proceeding because he only spoke and understood Spanish and was not able to read the district court's order denying his petition or the service of notice of entry setting forth the appeal period. Appellant complained that High Desert State Prison's failure to provide assistance in Spanish prevented him from access to the courts.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant's petition was procedurally barred. Appellant failed to demonstrate that an impediment external to the defense existed in the instant case.⁵ Appellant failed to demonstrate that the High Desert State Prison interfered with appellant's ability to access the court.⁶ Further, even assuming that the alleged language barrier would constitute good cause, appellant failed to demonstrate prejudice to excuse his procedural defects; appellant failed to raise any claim of error that worked to his actual and substantial


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

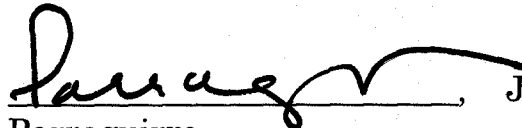
⁶See Lewis v. Casey, 518 U.S. 343, 350-60 (1996).

disadvantage.⁷ Therefore, we affirm the order of the district court dismissing appellant's petition as procedurally barred.

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


_____, J.
Douglas


_____, J.
Parraguirre


_____, Sr. J.
Shearing

⁷See Hogan v. Warden, 109 Nev. 952, 860 P.2d 710 (1993).

⁸See Luckett 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.

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

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