

IN THE SUPREME COURT OF THE STATE OF NEVADA


FELTON L. MATTHEWS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47145

FILED

OCT 03 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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On May 13, 2002, the district court convicted appellant, pursuant to a guilty plea, of two counts of lewdness with a child under the age of fourteen. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. This court affirmed the judgment of conviction on direct appeal.¹ The remittitur issued on August 5, 2003. Appellant unsuccessfully sought relief from his conviction by way of a post-conviction petition for a writ of habeas corpus.²

On January 23, 2006, appellant filed a second 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

¹Matthews v. State, Docket No. 39717 (Order of Affirmance, July 9, 2003).

²Matthews v. State, Docket No. 43822 (Order of Affirmance, March 10, 2005).

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 May 22, 2006, the district court denied appellant's petition. This appeal followed.³

Appellant filed his petition almost two and one-half 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 first argued that his petition was timely because it was filed within one year from issuance of the remittitur in the appeal from the denial of his first habeas corpus petition. Appellant's petition is not timely. The remittitur

³To the extent that appellant appealed from the denial of a "motion to correct the record and order for transcripts," which was filed subsequent to the denial of the habeas corpus petition, we lack jurisdiction to consider the denial of the motion as no statute or court rule permits an appeal from the denial of such a motion. See Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

⁴See NRS 34.726(1).

⁵See NRS 34.810(2). Appellant appeared to indicate that some of the claims raised in the instant petition were previously raised in the prior petition. Those claims are successive. To the extent that appellant raised new or different claims, those claims constitute an abuse of the writ.

⁶See NRS 34.726(1); NRS 34.810(3).

for purposes of NRS 34.726(1) includes only the remittitur from a timely appeal from a judgment of conviction.⁷

Next, appellant argued that he had good cause because he was not able to fully litigate his first habeas corpus petition. Appellant complained that this court "won't accept pro se appeal." Appellant further complained that this court in resolving the appeal in Docket No. 43822 erroneously stated that he had admitted to both finger and penile penetration of the victim. These claims do not amount to good cause. This court stated in the March 10, 2005 order of affirmance that it had considered all proper person documents received, but that it declined to consider any new claims or new facts not raised in the district court. This language did not imply that this court did not review all claims and facts properly raised in the district court in the first instance, and thus, appellant was able to fully litigate the denial of his first petition. Further, we note that appellant's claim that this court stated that he had admitted to both finger and penile penetration in the order in Docket No. 43822 is patently false—no such language is contained in the March 10, 2005 order of affirmance. Because appellant failed to demonstrate that any impediment external to the defense prevented him from fairly litigating his first habeas corpus petition, the district court did not err in denying these good cause claims.⁸

Next, appellant claimed that he had good cause to excuse his procedural defects because he was not permitted to file a response to the


⁷See Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998).

⁸See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).


State's November 2005 opposition to his motion to correct the record. Appellant failed to demonstrate that this provided a reason for his late and successive petition. Notably, the 2005 motion to correct the record was filed subsequent to the proceedings on the first habeas corpus petition. Therefore, the district court did not err in denying this good cause claim.

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.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

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.

cc: Hon. Donald M. Mosley, District Judge
Felton L. Matthews Jr.
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk