

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS COOPER, A/K/A DENNIS
JUNIOR COOPER, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47274

FILED

JUL 28 2006

JANETT M. BLOOM
CLERK OF SUPREME COURT
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; Joseph T. Bonaventure, Judge.

On January 17, 2002, the district court convicted appellant, pursuant to a guilty plea, of one count of conspiracy to commit robbery and one count of robbery. The district court sentenced appellant to serve a term of thirty-six to ninety-six months for robbery and a concurrent term of twelve to thirty months for conspiracy in the Nevada State Prison. No direct appeal was taken.

On January 19, 2006, appellant filed a proper person original petition for a writ of error coram nobis in this court. Appellant challenged the validity of his judgment of conviction and argued that he was actually innocent. This court denied the petition.¹

On March 3, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Cooper v. District Court, Docket No. 46627 (Order Denying Petition, February 14, 2006).

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 May 8, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than four years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³ A petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice.⁴

In an attempt to demonstrate cause for the delay, appellant argued that he had not received his files from his counsel until November 2004. Appellant further suggested that language in this court's order denying his original petition for a writ of error coram nobis provided good cause for his late habeas corpus petition. Finally, appellant claimed that a fundamental miscarriage of justice would exist if his petition was not considered on the merits because he was actually innocent of the offenses. Appellant argued he was innocent because the victim of the robbery, the bartender, could not positively identify appellant in a show-up identification after the robbery.

We conclude that the district court did not err in dismissing appellant's petition. A claim that a defendant did not receive case files

²See NRS 34.726(1).

³See id.

⁴Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

from counsel is not good cause.⁵ This court's order denying his original petition did not provide appellant with good cause to file a late petition.⁶ Finally, appellant failed to demonstrate that failure to consider his petition on the merits would result in a fundamental miscarriage of justice because appellant failed to demonstrate that he was actually innocent of the offenses.⁷ Appellant failed to demonstrate that the victim's inability to identify appellant resulted in the conviction of an innocent person. A review of the record on appeal indicates that there were other witnesses to the crime who provided the police with information about the getaway vehicle. The police pursued the getaway vehicle and apprehended appellant after the vehicle crashed. Appellant was read his Miranda⁸ rights, and appellant confessed that he had robbed Bullfeathers Bar. Appellant further identified the shotgun found in the vehicle and correctly informed the police that the shotgun was not loaded. Therefore, we affirm the order of the district court dismissing appellant's petition as procedurally barred.

⁵See Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

⁶In fact, this court informed appellant that it expressed no opinion as to whether appellant could satisfy the procedural requirements of NRS chapter 34.

⁷See Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001); Mazzan, 112 Nev. at 848, 921 P.2d at 922; see also Bousley v. United States, 523 U.S. 614 (1998); Murray v. Carrier, 477 U.S. 478, 496 (1986).

⁸Miranda v. Arizona, 384 U.S. 436 (1966).

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

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Joseph T. Bonaventure, District Judge
Dennis Junior Cooper III
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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.