

IN THE SUPREME COURT OF THE STATE OF NEVADA

CALVIN O'NEIL JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47319

FILED

SEP 13 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On September 15, 1999, the district court convicted appellant, pursuant to a jury verdict, of burglary (count I), battery with the intent to commit a crime (count II), first-degree kidnapping with the use of a deadly weapon (count III), and two counts of sexual assault with the use of a deadly weapon (counts IV and V). The district court sentenced appellant to serve the following terms in the Nevada State Prison: for count I, a term of 48 to 120 months; for count II, a term of 72 to 180 months; for count III, a term of life with the possibility of parole, plus an equal and consecutive term of life with the possibility of parole for the deadly weapon enhancement; for count IV, a term of life with the possibility of parole plus an equal and consecutive term of life with the possibility of parole for the deadly weapon enhancement; and for count V, a term of life with the possibility of parole plus an equal and consecutive term of life with the possibility of parole for the deadly weapon enhancement. All sentences

were ordered to run consecutively. This court affirmed appellant's judgment of conviction.¹ The remittitur issued on March 6, 2001.

On October 31, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On January 22, 2001, the district court denied appellant's petition. This court affirmed the district court's denial of appellant's petition, but remanded the matter for the limited purpose of correcting the judgment of conviction.²

On January 3, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State moved to dismiss the petition. Appellant filed an opposition to the motion to dismiss. 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 April 7, 2006, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant contended that (1) the district court erred in admitting evidence of and failing to grant a mistrial based on allegations of prior bad acts, (2) a jury instruction wrongly classified the

¹Jackson v. State, Docket No. 34890 (Order of Affirmance, February 7, 2001).

²Jackson v. State, Docket No. 37745 (Order of Affirmance and Limited Remand for Correction of Judgment of Conviction, May 23, 2002). The original judgment of conviction failed to include an equal and consecutive sentence of life with the possibility of parole for the deadly weapon enhancement on count III. The judgment of conviction was amended on June 11, 2002, to reflect the deadly weapon enhancement on Count III.

complaining witness as a victim, (3) trial counsel was ineffective for failing to request a Miller³ hearing, and (4) appellate counsel was ineffective for failing to raise meritorious claims and to federalize all issues.

Appellant filed his petition approximately five years after the remittitur issued in his direct appeal. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive and an abuse of the writ because he had previously filed a post-conviction petition for a writ of habeas corpus, and appellant acknowledged that his petition included new claims for relief as well as identical claims for relief.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶ Good cause must be an impediment external to the defense.⁷

In an attempt to excuse his procedural defects, appellant argued that he had good cause because he was required to exhaust state remedies for purposes of a federal habeas corpus petition. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause. Appellant failed to demonstrate that an impediment external to the

³Miller v. State, 105 Nev. 497, 500-01, 779 P.2d 87, 89 (1989).

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).

⁷See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

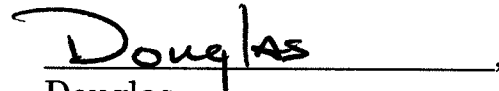
defense prevented him from raising all of his claims for relief in a timely, first petition.⁸ Therefore, we affirm the order of the district court.

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.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Joseph T. Bonaventure, District Judge
Calvin O'Neil Jackson
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada, 110 Nev. 349, 871 P.2d 944.

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).