

IN THE SUPREME COURT OF THE STATE OF NEVADA

GENE ANTHONY ALLEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47501

**FILED**

**JAN 10 2007**

ORDER OF AFFIRMANCE

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

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; Stewart L. Bell, Judge.

On April 7, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count each of sexual assault of a minor under the age of sixteen and lewdness with a minor under the age of fourteen. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years for the lewdness conviction, and a concurrent term of five to twenty years for the sexual assault conviction. This court affirmed appellant's judgment of conviction and sentence on direct appeal.<sup>1</sup> The remittitur issued on April 6, 2004.

On June 11, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court.

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<sup>1</sup>Allen v. State, Docket No. 41274 (Order of Affirmance, March 11, 2004).

Appellant filed supplemental proper person post-conviction petitions for writs of habeas corpus on July 8, 2003, and December 26, 2003. The State filed an opposition. On February 23, 2004, the district court denied appellant's petition. On appeal, this court affirmed the order of the district court.<sup>2</sup>

On February 24, 2004, appellant filed a proper person motion to vacate the judgment of conviction.<sup>3</sup> On March 11, 2004, appellant filed a proper person amended post-conviction petition for a writ of habeas corpus. Appellant additionally filed two motions to suppress. The State opposed appellant's petitions and motions. On June 25, 2004, the district court denied appellant's petitions and motions. On appeal, this court affirmed the order of the district court denying appellant's post-conviction petitions for writs of habeas corpus, but dismissed appellant's untimely appeal from the denial of his motions.<sup>4</sup>

On August 10, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus. On August 17, 2004, and August 23, 2004, appellant filed additional post-conviction petitions for writs of habeas corpus. The State filed an opposition. On October 11,

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<sup>2</sup>Allen v. State, Docket No. 42969 (Order of Affirmance, September 17, 2004).

<sup>3</sup>Because this motion appeared to challenge the judgment of conviction, it was construed as a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(b).

<sup>4</sup>Allen v. State, Docket No. 43599 (Order of Affirmance and Dismissing Appeal in Part, December 6, 2004).

2004, the district court denied appellant's petitions. On appeal, this court affirmed the order of the district court.<sup>5</sup>

On November 19, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus. On January 24, 2005, and again on March 11, 2005, appellant filed a "motion for sentencing transcripts." On March 3, 2005, appellant filed a document titled "motion for downward departure." The State opposed appellant's petition and motions. On March 2, 2005, the district court dismissed appellant's petition for a writ of habeas corpus. On March 29, 2005, the district court denied appellant's "motion for sentencing transcripts" and "motion for downward departure." This court affirmed the order of the district court denying appellant's petition and dismissed the appeal from the denial of the motions.<sup>6</sup>

On August 19, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On December 6, 2005, the district court denied the petition. No appeal was taken from the December 6, 2005 order.

On December 22, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the

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<sup>5</sup>Allen v. State, Docket No. 44180 (Order of Affirmance, March 4, 2005).

<sup>6</sup>Allen v. State, Docket No. 44991 (Order of Affirmance and Dismissing Appeal in Part, June 14, 2005).

motion. On January 24, 2006, the district court denied the motion. This court affirmed the order of the district court on appeal.<sup>7</sup>

In addition to the actions set forth above, appellant filed numerous proper person motions and documents in the district court.

On April 24, 2006, appellant filed what is arguably his eleventh post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On May 24, 2006, appellant filed a proper person document requesting another district court judge, and the State opposed appellant's request. 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 August 1, 2006, the district court dismissed appellant's petition and request for a different district court judge. This appeal followed.<sup>8</sup>

Appellant filed his petition more than two years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>9</sup> Moreover, appellant's petition was successive

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<sup>7</sup>Allen v. State, Docket No. 46666 (Order of Affirmance, July 25, 2006).

<sup>8</sup>To the extent that appellant appealed the decision of the district court to deny his request for a different district court judge, we conclude that the district court did not abuse its discretion in denying his request. Even assuming that the district court did not follow the procedures set forth in NRS 1.235, we conclude that no relief is warranted in the instant case as the habeas corpus petition is so lacking in merit that returning this matter to the district court for possible reconsideration of the petition by a different district court judge would be a waste of judicial resources.

<sup>9</sup>See NRS 34.726(1).

because he had previously filed post-conviction petitions for writs of habeas corpus and one petition was decided on the merits.<sup>10</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>11</sup>

Appellant did not attempt to demonstrate good cause to excuse the procedural defects in his petition. Therefore, we conclude that the district court did not err in dismissing the petition as procedurally barred.<sup>12</sup>

Finally, we note that appellant has filed numerous, arguably frivolous, documents in the district court challenging the validity of his judgment of conviction. We caution appellant that a prisoner may forfeit all deductions of time earned by the prisoner if the court finds that the prisoner has filed a document in a civil action and the document contains a claim or defense included for an improper purpose, the document contains a claim or defense not supported by existing law or a reasonable argument for a change in existing law, or the document contains allegations or information presented as fact for which evidentiary support is not available or is not likely to be discovered after further

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<sup>10</sup>See NRS 34.810(2).

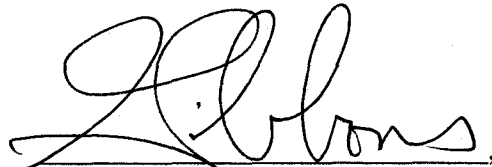
<sup>11</sup>See NRS 34.726(1); NRS 34.810(3).

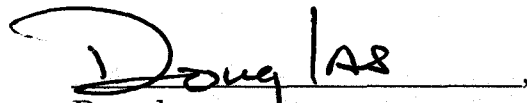
<sup>12</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

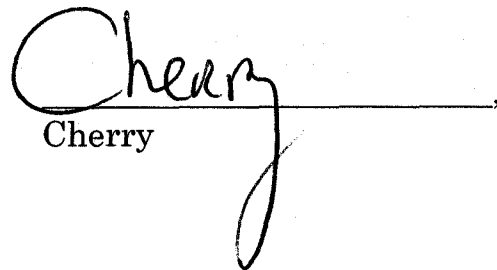
investigation.<sup>13</sup> A petition for a writ of habeas corpus is a civil action for purposes of this statute.<sup>14</sup>

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>15</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>16</sup>

  
Gibbons J.

  
Douglas J.

  
Cherry J.

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<sup>13</sup>See NRS 209.451(1)(d).

<sup>14</sup>NRS 209.451(5).

<sup>15</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>16</sup>We 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. Stewart L. Bell, District Judge  
Gene Anthony Allen  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk