

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID LEE MIMS A/K/A DAVID LEE
MIMS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47575

FILED

DEC 21 2006

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 appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On July 25, 1996, the district court convicted appellant, pursuant to a jury verdict, of one count of sexual assault with the use of a deadly weapon, two counts of first-degree kidnapping with the use of a deadly weapon, and one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve six consecutive terms of life in the Nevada State Prison with the possibility of parole and consecutive terms totaling twenty years. This court dismissed appellant's appeal from

his judgment of conviction and sentence.¹ The remittitur issued on October 13, 1998. Appellant unsuccessfully sought post-conviction relief.²

On June 1, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 June 9, 2006, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately eight years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Moreover, appellant's petition was successive because he had previously filed several post-conviction habeas corpus petitions.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

¹Mims v. State, Docket No. 29141 (Order Dismissing Appeal, September 24, 1998).

²Mims v. State, Docket No. 40237 (Order of Affirmance, May 23, 2003); Mims v. State, Docket No. 34700 (Order of Affirmance, June 27, 2001).

³See NRS 34.726(1).

⁴See NRS 34.810(1)(b)(2); NRS 34.810(2). To the extent that appellant raised new claims, these claims are an abuse of the writ. See NRS 34.810(2).

⁵NRS 34.180(2); NRS 34.726(1).

Appellant seemed to claim that he was deprived of legally appointed counsel in the proceedings below, the factual or legal basis for his claim was not reasonably available to him until recently, and that he should thus, be excused for his procedural defects. Specifically, appellant claimed that his trial counsel was not properly contracted to represent him and he only learned of this on July 6, 2004, two years previous to the filing of his petition. Further, appellant contended that had he known counsel was not allegedly contracted properly, he would have opted for self-representation, and thus, was denied this constitutional right.⁶ Based on our review of the record on appeal, we conclude that appellant failed to demonstrate adequate cause to excuse his procedural defects.⁷ Appellant's claim was reasonably available to him prior to the filing of his untimely and successive petition.⁸ Appellant's argument does not excuse his procedural defects. Thus, appellant failed to demonstrate good cause and prejudice, and the district court did not err in dismissing his petition.

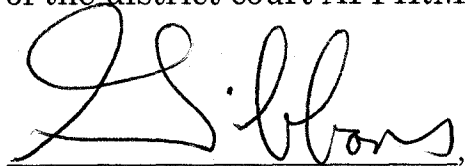
⁶See Faretta v. California, 422 U.S. 806 (1975); see also Graves v. State, 112 Nev. 118, 124, 912 P.2d 234, 238 (1996).

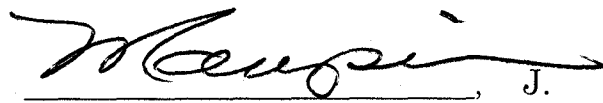
⁷See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

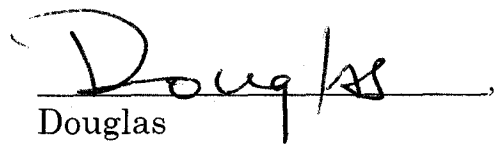
⁸See Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001) (recognizing that an impediment external to the defense may be demonstrated by showing that the factual or legal basis for the claim was not reasonably available prior to the filing of the petition); see also Murray v. Carrier, 477 U.S. 478, 488 (1986).

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.


Gibbons J.


Maupin J.


Douglas J.

cc: Hon. Janet J. Berry, District Judge
David Lee Mims
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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