

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD LEE GRUBER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47601

FILED

OCT 26 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: 
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; Jennifer Togliatti, Judge.

On March 8, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault on a child under sixteen, one count of lewdness with a child under fourteen, one count of attempted sexual assault on a minor under sixteen. The district court sentenced appellant to serve in the Nevada State Prison a term of life with the possibility of parole and two consecutive terms totaling ten to forty years. The district court further imposed the special sentence of lifetime supervision. This court dismissed appellant's appeal from the judgment of conviction because it was untimely filed.¹

On August 2, 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 November 2, 2005, the district court

¹Gruber v. State, Docket No. 45550 (Order Dismissing Appeal, July 29, 2005).

denied the petition. This court affirmed the order of the district court on appeal.²

On April 13, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed 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 July 31, 2006, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than one year after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Moreover, appellant's second petition was an abuse of the writ because he raised new or different claims from those claims raised in the first post-conviction proceeding.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

In an attempt to excuse his procedural defects, appellant argued his petition was not an abuse of the writ or successive because he filed it pursuant to the relation-back procedures set forth in NRCP 15. Appellant asserted that his second petition was merely an amendment to the first petition. Further, appellant claimed that the Nevada

²Gruber v. State, Docket No. 46265 (Order of Affirmance, March 24, 2006).

³See NRS 34.726(1).

⁴See NRS 34.810(2). To the extent that appellant raised any of the same claims previously litigated in the first habeas corpus proceeding, appellant's petition was also successive. See id.

⁵See NRS 34.726(1); NRS 34.810(3).

Department of Corrections lost his files, and he was only able to raise the claims in the instant petition once those files were recovered. Finally, appellant claimed that the district court lacked jurisdiction due to a statute of limitations problem.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant's petition was procedurally barred without good cause. Appellant's second petition was not merely an amendment to the first petition, but rather it initiated an entirely new action.⁶ Further, the procedures set forth in NRCP 15 that would allow for an amendment to a pleading are inapplicable to a post-conviction petition for a writ of habeas corpus because these procedures are inconsistent with the supplemental pleadings rules set forth in NRS chapter 34.⁷ Appellant failed to demonstrate that the alleged loss of his records prevented him from raising all of his claims in his timely, first habeas corpus petition.⁸ Finally, appellant failed to

⁶We note that the first petition had been denied by the district court and the decision affirmed by this court on appeal before appellant had filed the second petition.


⁷See NRS 34.750(5) ("No further pleadings may be filed except as ordered by the court."); NRS 34.780(1) (providing that the Nevada Rules of Civil Procedures apply to habeas corpus proceedings so long as they are not inconsistent with the procedures set forth in NRS chapter 34).

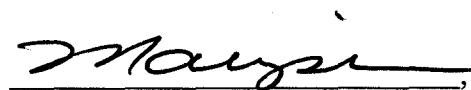
⁸See generally *Hathaway v. State*, 119 Nev. 248, 71 P.3d 503 (2003) (determining that all claims reasonably available to a petitioner within the one-year statutory period must be raised within the statutory period); *Hood v. State*, 111 Nev. 335, 890 P.2d 797 (1995) (determining that trial counsel's failure to send the case files did not prevent a petitioner from filing a timely petition).

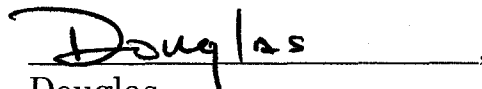
demonstrate any jurisdictional defect in the charges as appellant's plea of guilty waived any statute of limitations defense.⁹ Therefore, we affirm the order of the district court.

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹¹


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

⁹See Hubbard v. State, 110 Nev. 671, 677, 877 P.2d 519, 522 (1994) (holding that the statute of limitations is non-jurisdictional and may be waived by entry of a guilty plea).

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹¹We 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. Jennifer Togliatti, District Judge
Richard Lee Gruber
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk