

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAURY A. SINGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47725

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 denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On July 13, 1988, the district court convicted appellant, pursuant to a jury verdict, of three counts of burglary and nine counts of sexual assault with the use of a deadly weapon. The district court sentenced appellant to serve multiple consecutive and concurrent terms totaling 120 years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on November 14, 1989. Appellant unsuccessfully sought post-conviction relief.²

¹Singer v. State, Docket No. 19407 (Order Dismissing Appeal, October 24, 1989).

²Singer v. State, Docket No. 38561 (Order of Affirmance, June 27, 2002); Singer v. State, Docket Nos. 29029, 29547, 29910 (Order Dismissing Appeals and Denying Petition for Rehearing or Clarification, February 24, 1998); Singer v. State, Docket No. 23916 (Order Dismissing Appeal, July 28, 1995).

On April 20, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus, a supplemental petition, and additional documents in support of the petition and supplemental petition in the district court. The State opposed and moved to dismiss the petition arguing that appellant's petition was procedurally barred. Moreover, the State specifically pleaded laches. 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 denied appellant's petition. This appeal followed.

Appellant filed his petition more than sixteen 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 post-conviction petitions for a writ of habeas corpus.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ Good cause must be an impediment external to the defense.⁶ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁷

In an attempt to excuse his procedural defects, appellant first argued that he received ineffective assistance of post-conviction counsel.

³See NRS 34.726(1).

⁴See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁵See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

⁶See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁷See NRS 34.800(2).

Appellant did not have the right to counsel at the time he filed his first petition, and therefore he did not have the right to the effective assistance of counsel in that proceeding.⁸ Therefore, "'good cause' cannot be shown based on an ineffectiveness of post-conviction counsel claim."⁹

Second, appellant claimed that good cause supported the filing of the instant petition because he is entitled to file a second or successive petition for a writ of habeas corpus under this court's holding in Pellegrini v. State.¹⁰ Specifically, appellant argued that because he filed his first petition for post-conviction relief under NRS chapter 177, he should be allowed a reasonable amount of time after this court's decision on appeal from the denial of that petition to file a second or successive petition for habeas corpus relief.

In Pellegrini, this court held that petitioners who filed a timely first petition under NRS chapter 177 were entitled to a reasonable amount of time in which to file a successive petition pursuant to NRS chapter 34.¹¹ This court further determined that one year from the effective date of the amendment of NRS 34.726 was a reasonable amount of time for filing any such successive petition.¹² The effective date for the

⁸McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996); 1987 Nev. State., ch. 539, § 42, at 1230-31; see also Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997).

⁹McKague, 112 Nev. at 165, 912 P.2d at 258.

¹⁰117 Nev. 860, 34 P.3d 519 (2001).

¹¹Id. at 874, 34 P.3d at 529.

¹²Id. at 874-75, 34 P.3d at 529.

amendment to NRS 34.726 was January 1, 1993, and therefore any successive petition should have been filed by January 1, 1994. Appellant's claims appear to have been reasonably available and appellant failed to demonstrate that he could not have raised his claims within this time period.¹³ Although appellant's appeal from the denial of his first petition was pending during this time period, appellant acknowledges that the first petition raised constitutional claims and he was advised by counsel that he could file a separate petition challenging the ineffective assistance of counsel while the appeal was pending. Further, in Pellegrini this court also held that any successive petition would still be subject to other procedural bars, including laches.¹⁴ The State specifically pleaded laches, and appellant has failed to demonstrate a fundamental miscarriage of justice.¹⁵

Third, appellant claimed that good cause supported the filing of the instant petition because he is actually innocent of the crimes. Specifically, appellant claimed that had his counsel not been ineffective, there is a reasonable probability that given the evidence presented the jury would not have convicted him of the crimes.

A petitioner claiming actual innocence must show "it is more likely than not that no reasonable juror would have convicted him in light

¹³See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

¹⁴Pellegrini, 117 Nev. at 875, 34 P.3d at 529.

¹⁵See NRS 34.800(2).

of the new evidence' presented in his habeas petition."¹⁶ Appellant did not present any new evidence in his petition in support of his claim of actual innocence, and thus, appellant failed to demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice.¹⁷

Finally, appellant claimed that good cause supported the filing of the instant petition because: (1) he received ineffective assistance of trial and appellate counsel; (2) he did not know that a witness had recanted his allegedly perjured testimony until after he had filed his first petition for post-conviction relief; (3) the district court erred in denying his prior petitions and this court erred in affirming the denials of those petitions; and (4) the district court erred by treating a prior motion as a post-conviction petition for a writ of habeas corpus. Appellant failed to demonstrate that the factual or legal basis for his claims was not reasonably available during the prior proceedings or that an impediment external to the defense prevented him from raising his claims.¹⁸

For the reasons set forth above, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause or overcome the presumption of prejudice to the State, and we affirm the district court's denial of appellant's petition.

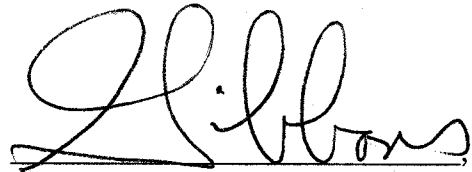
¹⁶Calderon v. Thompson, 523 U.S. 538, 559 (1998) quoting Schlup v. Delo, 513 U.S. 298, 327 (1995).


¹⁷See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

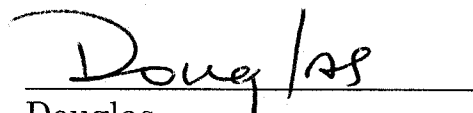
¹⁸See Hathaway, 119 Nev. 248, 71 P.3d 503.

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.¹⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Gibbons J.


Maupin J.


Douglas J.

cc: Hon. Stewart L. Bell, District Judge
Maury A. Singer
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).