

IN THE SUPREME COURT OF THE STATE OF NEVADA


PAUL ELWIN ACKLIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47730

FILED

FEB 22 2007

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 dismissing appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

On July 10, 1991, the district court convicted appellant, pursuant to a jury verdict, of one count each of first-degree murder with the use of a deadly weapon, robbery with the use of a deadly weapon, burglary, and ex-felon in possession of a firearm. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole for first-degree murder, plus an equal and consecutive term for the deadly weapon enhancement, and various concurrent and consecutive terms for the other offenses.

Appellant filed a motion for a new trial, which the district court granted. On appeal, this court remanded.¹ The district court denied appellant's motion on remand. This court dismissed appellant's direct

¹State v. Acklin, Docket No. 23160 (Order of Remand, December 3, 1992).

appeal from the judgment of conviction and his appeal from the order denying his motion for a new trial.² The remittitur issued on April 19, 1994.

On March 24, 1995, appellant, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, and appellant filed two supplements to the petition. On February 5, 1997, the district court denied appellant's petition. This court affirmed in part and reversed in part the district court's order on appeal.³ The district court denied appellant relief on remand. This court affirmed the district court's order denying relief on remand.⁴

On January 12, 2005, 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. 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 28, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than ten years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁵ Moreover, appellant's petition was successive

²Acklin v. State, Docket Nos. 22638 and 24278 (March 31, 1994).

³Acklin v. State, Docket No. 29996 (Order Affirming in Part, Reversing in Part and Remanding, March 5, 2001).

⁴Acklin v. State, Docket No. 39218 (Order of Affirmance, April 21, 2003).


⁵See NRS 34.726(1).

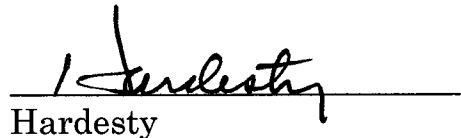
because appellant had previously filed a post-conviction petition for a writ of habeas corpus.⁶ Further, to the extent that appellant raised claims that could have been raised in his prior petition, appellant's petition constituted an abuse of the writ.⁷ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁸

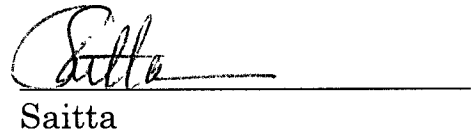
Appellant made no attempt to excuse his procedural defects. Accordingly, we conclude the district court did not err in dismissing appellant's petition.

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.
Parraguirre

 J.
Hardesty

 J.
Saitta

⁶See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁷See NRS 34.810(2).

⁸See NRS 34.726(1); (NRS 34.810(1)(b) NRS 34.810(3)).

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

cc: Hon. Robert H. Perry, District Judge
Paul Elwin Acklin
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk