

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT EARL JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47939

FILED

JAN 29 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Edwards*
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; Jennifer Togliatti, Judge.

On January 27, 1999, the district court convicted appellant, pursuant to a jury verdict, of one count of attempted murder with the use of a deadly weapon and one count of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve in the Nevada State Prison two consecutive terms of 32 to 144 months for the attempted murder count and two consecutive terms of life with the possibility of parole for the murder count, the terms between counts to be served consecutively. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on June 20, 2000.

On August 13, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Jones v. State, Docket No. 33748 (Order Dismissing Appeal, May 25, 2000).

State opposed the petition. On December 7, 2001, the district court denied appellant's petition on the ground that it was untimely filed. This court affirmed the order of the district court on appeal.²

On March 11, 2003, appellant filed a second proper person post-conviction petition for a writ of habeas corpus and a motion for appointment of counsel in the district court. The State opposed the petition and motion. On June 5, 2003, the district court denied appellant's petition and motion. This court affirmed the order of the district court on appeal.³

On June 1, 2006, appellant filed a third proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that the petition was untimely filed. The State further specifically pleaded laches. 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 August 28, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition almost six years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Appellant's petition was procedurally barred absent a

²Jones v. State, Docket No. 39039 (Order of Affirmance, December 19, 2002).

³Jones v. State, Docket No. 41626 (Order of Affirmance, April 22, 2004).

⁴See NRS 34.726(1).

demonstration of cause for the delay and undue prejudice.⁵ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁶

In his petition, appellant raised the five claims previously raised on direct appeal. In an attempt to excuse his procedural defects, appellant argued that his appellate counsel had failed to federalize his claims on direct appeal. Appellant further claimed that this court incorrectly decided his direct appeal claims.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant had failed to demonstrate cause for the delay or overcome the presumption of prejudice. Appellant's claims, his direct appeal claims with federal citations, were reasonably available to appellant within the one-year period for filing a timely post-conviction petition for a writ of habeas corpus petition.⁷ Appellant failed to demonstrate that an impediment external to the defense excused his procedural defects.⁸ Further, appellant did not attempt to overcome the presumption of prejudice. Therefore, because appellant failed to demonstrate cause for the delay or overcome the presumption of prejudice, we affirm the order of the district court dismissing the petition as procedurally barred.

⁵See NRS 34.726(1).

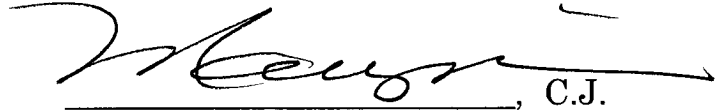
⁶See NRS 34.800(2).

⁷See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

⁸See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

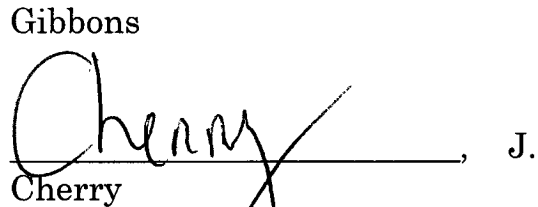
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.

Maupin

_____, J.

Gibbons

_____, J.
Cherry

cc: Hon. Jennifer Togliatti, District Judge
Robert Earl Jones
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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