

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN DENNIE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48068

FILED

FEB 08 2007

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

On May 7, 2003, the district court convicted appellant, pursuant to a jury verdict, of one count of invasion of a home while in possession of a firearm, one count of robbery with the use of a deadly weapon, one count of discharging a firearm at or into a structure, two counts of battery with the use of a deadly weapon and one count of ex-felon in possession of a firearm. The district court sentenced appellant to serve a total of three consecutive terms of thirty-five months to one hundred and fifty-six months in the Nevada State Prison.¹ This court affirmed appellant's judgment of conviction and sentence on appeal.² The remittitur issued on May 17, 2005.

¹On July 11, 2003, and on December 4, 2003, the judgment of conviction was amended to correct drafting errors.

²Dennie v. State, Docket No. 41404 (Order of Affirmance, April 21, 2005).

On March 26, 2004, while his direct appeal was pending, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On January 18, 2005, the district court denied the petition. This court affirmed the order of the district court on appeal.³

On June 10, 2005, appellant filed a second post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On February 2, 2006, the district court dismissed the petition. This court affirmed the order of the district court on appeal.⁴

On June 19, 2006, appellant filed a third proper person post-conviction petition for a writ of habeas corpus in the district court. 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 October 24, 2006, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than one year after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁵ Moreover, appellant's petition was successive and an abuse of the writ because he raised a new and different claim from those

³Dennie v. State, Docket No. 44480 (Order of Affirmance, July 22, 2005).

⁴Dennie v. State, Docket No. 46167 (Order of Affirmance, May 5, 2006).

⁵See NRS 34.726(1).

claims previously decided on the merits in the first two post-conviction proceedings.⁶ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁷

In an attempt to excuse his procedural defects, appellant argued that he was raising a claim involving newly discovered evidence. Specifically, appellant claimed that he only recently received an affidavit from Brian Griffin, the owner of the Royal Antilles Court residence wherein the crimes took place, that appellant had been given a key to the home and authority and responsibility to watch over the home. Appellant claimed that he was unable to locate Brian Griffin for trial as he had moved from his home.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause to excuse his procedural defects. Appellant failed to demonstrate that the evidence was newly discovered or could not have been discovered with reasonable diligence prior to the expiration of the one-year period for filing a timely habeas corpus petition.⁸ Both appellant's father and brother testified at trial that appellant had a key to the Royal Antilles Court residence. Testimony was presented throughout the trial that Brian Griffin was the owner of the Royal Antilles Court

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

⁷See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

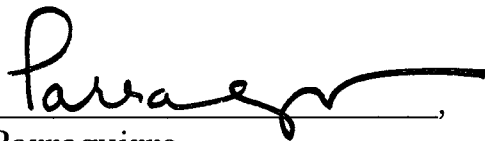
⁸See generally Mortensen v. State, 115 Nev. 273, 286-87, 986 P.2d 1105, 1114 (1999).


residence and appellant had access to the residence. Testimony was further presented that appellant was at the very least acquainted with Brian Griffin. Appellant, who represented himself at trial, provided a handwritten list of witnesses and appellant did not include Brian Griffin on the list. Appellant failed to demonstrate that he was not able anticipate the potential testimony of Brian Griffin as set forth in the affidavit or to reasonably discover the location of Brian Griffin for trial. Further, appellant failed to demonstrate that this evidence was not cumulative and that the presentation of this evidence would render a different probable result upon retrial. Appellant's defense at trial was that he did not commit the crime because he had an alibi—his father and brother testified that appellant was at the residence on Chiltern at the time of the crime. Thus, potential testimony from Brian Griffin that he had given appellant a key would only have been cumulative to testimony presented at trial. Appellant failed to demonstrate that potential testimony that he had been given responsibility over the house would have resulted in a different probable result at trial. Thus, appellant failed to demonstrate that an impediment external to the defense prevented him from raising this claim earlier, and we conclude that the district court did not err in denying the petition as procedurally defective.⁹


⁹See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); 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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹¹


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Stewart L. Bell, District Judge
Bryan Dennie
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹⁰See Luckett 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.