

IN THE SUPREME COURT OF THE STATE OF NEVADA


CARL HENRY OLSEN, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48096

FILED

FEB 01 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
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; Lee A. Gates, Judge.

On May 10, 1990, the district court convicted appellant, pursuant to a jury verdict, of eight counts of sexual assault on a minor under the age of fourteen. The district court sentenced appellant to serve eight consecutive terms of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on July 16, 1991.

On January 8, 1991, appellant filed a petition for post-conviction relief in the district court. The State opposed the petition. On February 22, 1991, the district court entered an order denying the petition. This court dismissed appellant's subsequent appeal.²

¹Olsen v. State, Docket No. 21163 (Order Dismissing Appeal, June 27, 1991).

²Olsen v. State, Docket No. 22140 (Order Dismissing Appeal, June 27, 1991).

On April 3, 2006, appellant filed a 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. Further, 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 30, 2006, the district court entered specific findings of fact and conclusions of law dismissing appellant's petition. This appeal followed.

Appellant's petition was untimely filed as it was filed approximately twelve years after the one-year exemption period from NRS 34.726 for petitioners who had filed a timely petition for post-conviction relief prior to the amendment to NRS chapter 34 imposing a one-year deadline upon post-conviction petitions for writs of habeas corpus.³ Moreover, appellant's petition was successive because he had previously filed a petition for post-conviction relief and that petition was decided upon the merits.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁶

³See Pellegrini v. State, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001).

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 NRS 34.800(2).

In an attempt to excuse his procedural defects, appellant argued that his 1991 petition for post-conviction relief was denied without prejudice pursuant to minute entries and that he was never informed that the decision was without prejudice.

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 good cause or overcome the presumption of prejudice to the State. Although the minute entries state that the denial of the petition was without prejudice, the district court's written order contains no such provision. The district court's written decision takes precedence over the oral decision.⁷ Further, on appeal from the denial of the petition for post-conviction relief, this court reviewed the district court's decision to deny the petition on the merits of the claims raised in the petition. Even assuming that the district court had intended the denial of the first petition to be without prejudice, appellant's delay in filing a second petition is not reasonable.⁸ Appellant offered no credible reason explaining his twelve-year delay.⁹ Finally, appellant failed to overcome the presumption of prejudice. Therefore, we affirm the order of the district court dismissing the petition as procedurally barred.

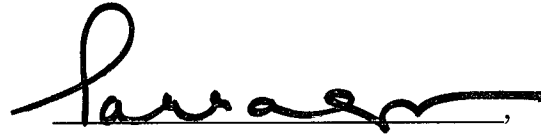
⁷See generally Miller v. Hayes, 95 Nev. 927, 929, 604 P.2d 117, 118 (1979).

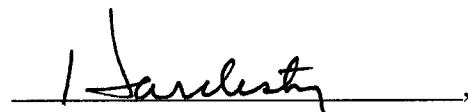
⁸See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

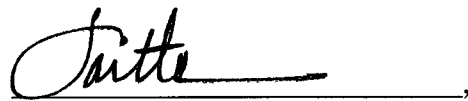
⁹See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

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. Lee A. Gates, District Judge
Carl Henry Olsen III
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.