

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES KENNETH MIZE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48160

FILED

JUL 23 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

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. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On November 18, 1993, the district court convicted appellant, pursuant to a jury verdict, of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of nine years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on January 10, 1995.

¹Mize v. State, Docket No. 25193 (Order Dismissing Appeal, December 29, 1994).

On May 16, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied appellant's petition as untimely, and this court affirmed the denial on appeal.²

On July 11, 2002, appellant filed a motion to modify or correct his sentence in the district court. The district court denied appellant's motion, and this court affirmed the denial on appeal.³

On November 30, 2005, appellant filed a petition for a writ of certiorari in the district court. The district court denied appellant's motion, and this court affirmed the denial on appeal.⁴

On July 24, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed and moved to dismiss the petition, arguing that the petition was untimely. Moreover, the State specifically pleaded laches. Appellant filed a reply to the State's motion to dismiss. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent

²Mize v. State, Docket No. 38275 (Order of Affirmance, May 31, 2002).

³Mize v. State, Docket No. 40558 (Order of Affirmance, October 28, 2003).

⁴Mize v. State, Docket No. 47014 (Order of Affirmance, July 5, 2006).

appellant or to conduct an evidentiary hearing. On October 9, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition approximately eleven and one-half years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.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 argued that he had been in disciplinary segregation for the past eight and one-half years and, as a result, only had limited access to legal materials. Appellant also argued that he had limited knowledge of the law and little or no assistance in raising his claims. Finally, appellant argued that he was unable to raise the Brady⁸ claims he raised in this petition earlier because he had only recently understood what constituted a Brady violation.

⁵See NRS 34.726(1).

⁶See NRS 34.726(1).

⁷See NRS 34.800(2).

⁸Brady v. Maryland, 373 U.S. 83 (1963).

Based upon our review of the record on appeal, we conclude the district court did not err by dismissing appellant's petition. When a Brady claim is raised in an untimely post-conviction petition for a writ of habeas corpus, the petitioner has the burden of pleading and proving specific facts that demonstrate good cause and actual prejudice to overcome the procedural bar.⁹

Appellant claimed that the State violated Brady by failing to provide him with written voluntary witness statements and an admonishment form used in a photo identification session. Appellant failed to demonstrate that the written witness statements existed, or, if they existed, that they were not provided to his counsel. Further, because appellant failed to demonstrate that disclosure of the admonishment form would have resulted in a reasonable probability of a different outcome at trial, appellant failed to demonstrate that the admonishment form was material evidence. Therefore, appellant failed to demonstrate that his Brady claims constituted good cause and prejudice to overcome the procedural bar.

⁹See Mazzan v. Warden, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000) (holding that good cause and actual prejudice in the context of a Brady claim can be established by demonstrating that the evidence was favorable to the defendant, was withheld by the State and was material); see also NRS 34.726(1).

Further, appellant's placement in disciplinary segregation, lack of knowledge of the law, and limited assistance in preparing his claims does not constitute good cause to excuse the filing of an untimely petition.¹⁰

Moreover, appellant failed to overcome the presumption of prejudice to the state. Appellant failed to demonstrate that he could not have reasonably raised his Brady claim during the statutory time period for filing his petition.¹¹ Appellant acknowledged in his petition that the basis for his Brady claim came about during trial when Officer Velasquez testified. Finally, appellant failed to demonstrate that a fundamental miscarriage of justice occurred in the proceedings that resulted in the judgment of conviction or sentence.¹² Accordingly, we affirm the order of the district court.

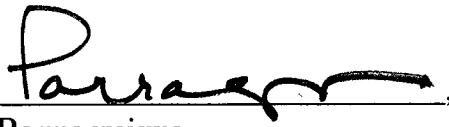
¹⁰See generally Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that petitioner's claim of organic brain damage, borderline mental retardation and reliance on assistance of inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive post- conviction petition).

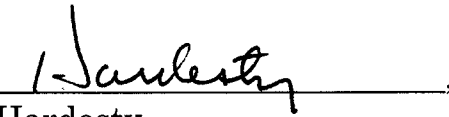
¹¹See NRS 34.800(1)(a); Hathaway v. State, 119 Nev. 248, 253, 71 P.3d 503, 507 (2003).


¹²See NRS 34.800(1)(b).

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.¹³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁴


Parraguirre, J.


Hardesty, J.


Saitta, J.

¹³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁴We 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.

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