

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUNIOR WALKER MILLS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48373

FILED

MAY 30 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 dismissing appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On June 8, 2000, the district court convicted appellant, pursuant to a jury verdict, of one count of murder with the use of a deadly weapon and one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole for the murder count and two consecutive terms of 72 to 180 months for the robbery count. The latter terms were imposed to run consecutively to the former. This court affirmed appellant's judgment of conviction on direct appeal.¹ The remittitur issued on August 8, 2001.

Appellant next filed a proper person motion for a new trial. The State opposed the motion, and appellant filed a response. On October

¹Mills v. State, Docket No. 36275 (Order of Affirmance, July 11, 2001).

11, 2001, the district court denied the motion. This court affirmed the order of the district court on appeal.²

On August 7, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court dismissed the petition. Appellant appealed the district court's order, and this court affirmed the order of the district court.³

On August 17, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court did not order the State to respond. On September 21, 2006, appellant filed a motion for default judgment based on the respondent's failure to file an answering brief. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. The district court denied appellant's petition for writ of habeas corpus and his motion for a default judgment. This appeal followed.

Appellant filed his petition more than five years after this court issued the remittitur for his direct appeal. Thus, appellant's petition was untimely filed.⁴ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁵

²Mills v. State, Docket No. 38690 (Order of Affirmance, April 9, 2003).

³Mills v. Warden, Docket No. 42631 (Order of Affirmance, July 27, 2004).

⁴See NRS 34.726(1).

⁵See id.

Appellant attempted to demonstrate good cause for the delay by arguing that he did not receive certain "unfalsified" transcripts and exhibits related to the testimony of Dr. John Meany and Ryan Millick until December 2004. Generally, a petitioner attempting to overcome procedural default may establish cause by showing that the State withheld favorable evidence.⁶ Further, he may establish prejudice by showing that the evidence was material.⁷ "[E]vidence is material if there is a reasonable probability that the result would have been different if the evidence had been disclosed."⁸ Appellant claimed that Dr. Meany testified falsely about appellant's criminal history at appellant's competency hearing.

Based on our review of the record, we conclude that appellant failed to show prejudice as he asserted that he was competent and agreed with Dr. Meany's final assessment at the hearing. Moreover, appellant's criminal history was not introduced at trial and the district court sustained appellant's objections to any matters related to his prior criminal history at his sentencing hearing. In addition, appellant failed to demonstrate prejudice regarding the exhibits or testimony related to Millick as appellant did not make specific factual allegations as to the evidence related to Millick.⁹ Therefore, appellant did not meet his burden

⁶State v. Bennett, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003).

⁷Id.

⁸Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000).

⁹See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984) (holding that petitioner was not entitled to relief where his petition did not contain specific facts supporting his allegations).

of showing that the evidence was material. Further, appellant failed to show that the documents he sought had been withheld by the State. Accordingly, the district court did not err in rejecting this good cause argument.

Appellant also asserted that he discovered evidence related to the testimony of Toni Leal-Olsen. However, he did not make specific allegations as to the nature of the newly discovered evidence beyond his assertion that she may have recanted some of her testimony.¹⁰ Appellant did not demonstrate that the purported evidence was material. Therefore, he did not meet his burden of demonstrating cause and prejudice to excuse his untimely petition, and we conclude that the district court did not err in rejecting this good cause argument.

Appellant also asserted that he was entitled to a default judgment because the State failed to respond to his petition. Upon the filing of a petitioner's first petition challenging the validity of his conviction or sentence, a district court must order the State to respond, conduct an evidentiary hearing, or take other action that the court deems appropriate.¹¹ However, in the case of a second petition, the district court may summarily dismiss the petition where it is apparent that the petitioner is entitled to no relief.¹² The district court did not err in denying appellant's motion for a directed verdict as the court was not obligated to order the State to respond to appellant's second petition.

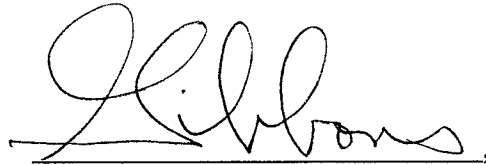
¹⁰See id.

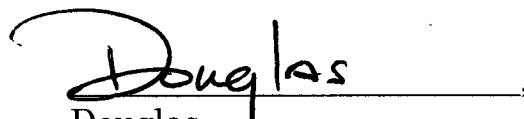
¹¹NRS 34.745(1).

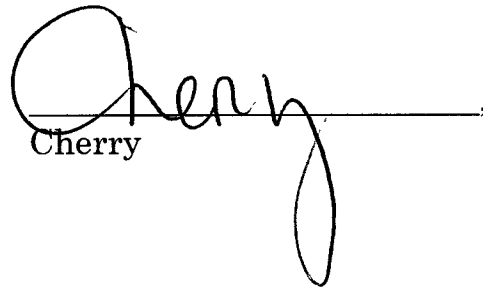
¹²NRS 34.745(4).

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


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Steven R. Kosach, District Judge
Junior Walker Mills
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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.