

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT ALLEN SLOANE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48556

FILED

JUN 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 October 28, 1985, the district court convicted appellant, pursuant to a jury verdict, of one count each of first-degree kidnapping with the use of a deadly weapon, sexual assault, and murder with the use of a deadly weapon. The district court sentenced appellant to serve five consecutive terms of life with the possibility of parole in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on April 27, 1987.

On August 5, 1994, appellant filed a proper person "motion for order requiring scientific examination." On October 10, 1994, the district

¹Sloane v. State, Docket No. 17010 (Order Dismissing Appeal, March 31, 1987).

court denied appellant's motion without appointing counsel or conducting an evidentiary hearing. This court dismissed appellant's appeal from the district court's order.²

On September 27, 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 his petition was untimely. Moreover, 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 December 1, 2006, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than 19 years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁵

²Sloane v. State, Docket No. 26768 (Order Dismissing Appeal, April 9, 1998).

³See NRS 34.726(1). Appellant's petition was also filed more than twelve years after amendments to NRS Chapter 34. See 1991 Nev. Stat., ch. 44 § 5, at 75.

⁴See id.

⁵See NRS 34.800(2).

In an attempt to demonstrate cause for the delay, appellant argued that DNA testing was not available at the time of his conviction and further, he needed time to support his claim with constitutional authority. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant did not establish cause for the delay. Even assuming that the prior unavailability of DNA testing would constitute cause to excuse an untimely petition, appellant failed to demonstrate adequate cause for the entire length of his delay. He raised the same claim in a 1994 motion for scientific testing, and, though he claimed that he was unable to support his motion with constitutional authority at that time, he did not support his claim in the instant petition with any authority that had been decided after 1994. Therefore, the district court did not err in finding that he did not establish cause for the delay.

Moreover, appellant did not rebut the presumption of prejudice to the State. He asserted that the State was not prejudiced because his conviction resulted from physical evidence that had been preserved in a vault. However, appellant was not convicted solely on biological evidence. Instead, appellant's conviction relied upon other evidence. Given the passage of time, appellant failed to demonstrate the State would not be prejudiced at this late date. Accordingly, the district court did not err in finding that appellant did not rebut the presumption of prejudice to the State.

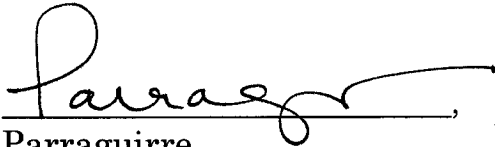
Lastly, appellant failed to demonstrate that the denial of the petition as procedurally defective would unduly prejudice him or would result in a fundamental miscarriage of justice.⁶ He did not demonstrate that DNA testing would conclusively establish his innocence.⁷ In the appeal from the denial of appellant's 1994 motion, this court concluded that satisfactory evidence of appellant's guilt, separate and apart from the biological evidence, was presented during the trial. Evidence linked appellant to the handcuffs that were used in the offense. Ballistics evidence indicated that a gun that belonged to appellant's mother was used in the crime. Further, eyewitness testimony showed that appellant appeared to be smeared with blood shortly after the killing. Because appellant's conviction rested on strong evidence connecting appellant to the crimes, and not simply identification evidence, post-conviction DNA testing was unnecessary. Moreover, we are not satisfied that testing could conclusively establish appellant's innocence. Therefore, the district court did not err in denying the petition.

⁶See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); Hogan v. Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993).


⁷See Sewell v. State, 592 N.E.2d 705, 708 (Ind. Ct. App. 1992) (recognizing that DNA testing is warranted "only where a conviction rested largely upon identification evidence and [testing] could definitively establish the accused's innocence").

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹

 J.
Parraguirre

 J.
Hardesty

 J.
Saitta

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We 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. Stewart L. Bell, District Judge
Scott Allen Sloane
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk