

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARNOLD ANDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48576

FILED

JUL 20 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY G. Alvarado
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On March 3, 2005, the district court convicted appellant, pursuant to a jury verdict, of six counts of burglary (Counts 1, 5, 9, 13, 17, and 20), six counts of forgery (Counts 2, 6, 10, 14, 18, and 21), four counts of theft (Counts 3, 7, 11, and 15), and six counts of obtaining and using personal identification information of another (Counts 4, 8, 12, 16, 19, and 22). The district court sentenced appellant to serve terms of 16 to 72 months for each burglary count, 12 to 34 months for each forgery count, 12 to 36 months for each theft count, and 32 to 144 months for each count of obtaining and using the personal identification information of another in the Nevada State Prison. Further, the district court imposed the sentences for Counts 1 through 4 to run consecutive to each other, and the sentences for Counts 5 through 22 to run concurrent to each other and

Counts 1 through 4. Appellant appealed, and this court affirmed his conviction and sentence.¹ The remittitur issued on January 18, 2006.

On February 16, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On May 3, 2006, the district court denied appellant's petition. Appellant did not appeal the district court's order.

On September 20, 2006, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 18, 2006, the district court denied appellant's petition. This appeal followed.

We note that the district court addressed the merits of appellant's petition. However, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus in which there was a prior determination on the merits.² To the

¹Anderson v. State, Docket No. 45014 (Order of Affirmance, December 23, 2005).

²See NRS 34.810(2). Appellant repeated the following claims: ineffective assistance of counsel for (1) failure to strike a juror who had a Bank of America account; (2) failure to strike a juror that had seen news reports about appellant; (3) failure to object to the introduction of appellant's booking photo; (4) failure to inform the jury that appellant possessed a Bank of America account; (5) failure to point out that the

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extent that appellant raised new claims in his petition, these claims constituted an abuse of the writ.³ "The court shall dismiss a petition if the court determines that the petitioner's conviction was the result of a trial and the grounds for the petition could have been raised in a direct appeal or a prior petition for a writ of habeas corpus or postconviction relief."⁴ Thus, appellant's petition was procedurally barred absent a demonstration

... continued

driver's license admitted into evidence bore a different date of birth than the victim's date of birth; (6) stipulating that appellant was on a lease agreement where incriminating evidence was discovered; and (7) failure to permit appellant to cross-examine witness or conduct further cross-examination.

³See *id.* The claims that constituted an abuse of the writ include: counsel was ineffective for (1) failing to argue for a change of venue; (2) failing to object to jury instructions; (3) failing to challenge assertion that appellant was Eric Mehl; (4) failing to argue that officers searching the address did not fingerprint the premises or recover appellant's handwriting from the premises; (5) waiving appellant's preliminary hearing; and (6) failing to investigate the bank's videotape. Appellant's claims of prosecutorial misconduct, insufficient evidence, improper introduction of his booking photo, that his outburst necessitated a mistrial, and speedy trial violations should have been raised on appeal and he did not establish good cause for his failure to do so. NRS 34.810(1)(b)(2).

⁴NRS 34.810(1)(b)(2).

of good cause and prejudice.⁵ To show good cause, a petitioner must demonstrate that an impediment external to the defense prevented him from complying with procedural default rules.⁶

On the face of the petition, appellant argued that his procedural defect should be excused because he had not been provided with the necessary transcripts and documents to assert his claims. We conclude that appellant did not establish good cause to excuse his successive petition.⁷ Further, appellant failed to demonstrate that he would be unduly prejudiced by the dismissal of his petition because he did not include intelligible claims supported by specific facts.⁸ Consequently, although the district court incorrectly reached the merits, we affirm the order of the district court as the district court reached the correct result in denying the petition as appellant's petition was procedurally barred.⁹

⁵See NRS 34.810(3).

⁶See Crump v. Warden, 113 Nev. 293, 302, 934 P.2d 247, 252 (1997).

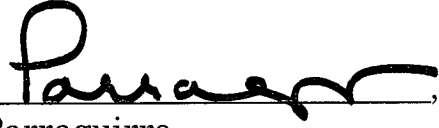
⁷See generally Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

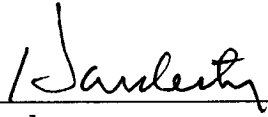
⁸See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

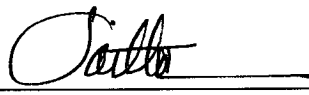
⁹See generally Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

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

¹⁰See Lockett 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.

cc: Eighth Judicial District Court Dept. 17, District Judge
Arnold Keith Anderson
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk