

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48675

FILED

MAY 22 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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On October 25, 2000, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. This court affirmed appellant's judgment of conviction on appeal.¹ The remittitur issued on June 4, 2002.

Appellant filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the

¹Collins v. State, Docket No. 37061 (Order of Affirmance, May 10, 2002).

petition. On April 14, 2003, the district court denied the petition. This court affirmed the order of the district court on appeal.²

Appellant also filed a motion to correct an illegal sentence in the district court. The State opposed the motion. On November 25, 2003, the district court denied the motion. This court affirmed the order of the district court on appeal.³

On September 11, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss 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 November 29, 2006, the district court dismissed the petition. This appeal followed.

In his petition, appellant raised four grounds for relief: (1) appellant was denied his right to confront witnesses in violation of his constitutional rights when the district court erroneously admitted hearsay statements from his wife; (2) the State committed prosecutorial misconduct during closing argument when the State repeatedly belittled his defense and called appellant a liar in violation of constitutional rights;

²Collins v. State, Docket No. 41194 (Order of Affirmance, April 14, 2004).

³Collins v. State, Docket No. 42507 (Order of Affirmance, June 3, 2004).

(3) the district court's jury instruction defining premeditation improperly minimized the State's burden of proof in violation of constitutional rights; and (4) appellant was denied the right to the effective assistance of counsel in violation of his constitutional rights when trial counsel failed to adequately investigate his case and failed to obtain an expert witness.

Appellant filed his petition more than four years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had litigated a direct appeal and pursued a post-conviction petition for a writ of habeas corpus.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶

Appellant acknowledged that grounds one, two and three were raised on direct appeal in a different manner. However, appellant claimed that he had good cause to litigate these claims again because his appellate counsel failed to raise these claims in terms of constitutional violations—leaving the claims unexhausted for federal purposes. Appellant acknowledged that he raised a similar claim to ground 4 in his first petition, but asserted that he had good cause to litigate the claim again

⁴See NRS 34.726(1).

⁵See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁶See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

because he did not have the benefit of the assistance of post-conviction counsel or an investigator during the first post-conviction proceedings.

Based upon our review of the record on appeal, we conclude the district court did not err in dismissing the petition as procedurally barred. Appellant failed to demonstrate that an impediment external to the defense excused his procedural defects.⁷ Appellant failed to demonstrate that his claims for relief were not reasonably available within the one-year statutory time period.⁸ The failure to exhaust state remedies in prior proceedings is not good cause. We further note that in the first post-conviction proceedings this court considered and affirmed the district court's rejection of appellant's claim that his appellate counsel was ineffective for failing to raise his direct appeal claims as constitutional violations. The doctrine of the law of the case prevents further litigation of this issue.⁹ Finally, appellant failed to demonstrate that the district court abused its discretion in not appointing post-conviction counsel during the prior proceedings, and thus, this claim did not excuse his procedural defects.¹⁰ Therefore, we affirm the order of the district court

⁷See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

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

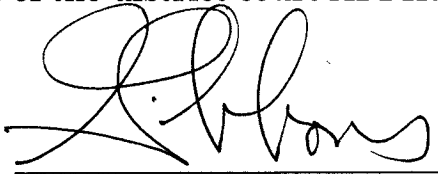
⁹See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

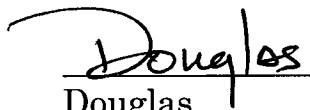
¹⁰See NRS 34.750(1).

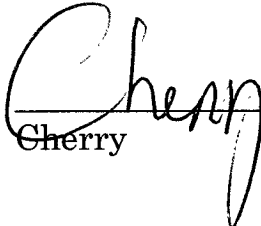
dismissing appellant's petition as procedurally barred and without good cause.

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.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹²


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹²We 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. 6, District Judge
Ronald W. Collins
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk