

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN STEVEN OLAUSEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48841

**FILED**

SEP 07 2007

BY JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant John Olausen's postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

In 1979, Olausen was convicted by the district court, pursuant to a guilty plea, of first-degree murder, robbery with the use of a deadly weapon, and kidnapping with the use of a deadly weapon. He was sentenced to death by a three-judge panel. This court affirmed his conviction and sentence on direct appeal.<sup>1</sup> In 1989, this court granted Olausen postconviction relief, vacated his death sentence, and remanded to the district court for a second penalty hearing.<sup>2</sup> Olausen's second hearing occurred before another three-judge panel. On December 7, 1989, the three-judge panel entered a document entitled "Findings,

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<sup>1</sup>Wilson v. State, 99 Nev. 362, 664 P.2d 328 (1983) (Olausen's appeal was consolidated with that of one of his codefendant's, Edward Wilson).

<sup>2</sup>Wilson v. State, 105 Nev. 110, 771 P.2d 583 (1989).

Determinations and Imposition of Sentence,” and sentenced Olausen to a term of life in prison without the possibility of parole.

Seven years after his second penalty hearing, Olausen filed a notice of appeal. This court dismissed his appeal as untimely.<sup>3</sup> In 1997, Olausen filed in the district court a proper person postconviction habeas corpus petition. The district court dismissed the petition, concluding that it was procedurally barred. This court affirmed on appeal.<sup>4</sup>

In 2006, Olausen filed in the district court a second proper person postconviction petition for a writ of habeas corpus. He alleged that the 1989 document entitled “Findings, Determinations and Imposition of Sentence” entered by the three-judge panel after his second penalty hearing was not a valid judgment of conviction. After a hearing, the district court found that the 1989 document constituted a valid judgment of conviction. The district court issued a written order on January 25, 2007, denying Olausen postconviction relief. This appeal followed.<sup>5</sup> Olausen raises two claims for our review.

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<sup>3</sup>Olausen v. State, Docket No. 28669 (Order Dismissing Appeals, September 23, 1996) (with the remittitur issuing on September 23, 1996).

<sup>4</sup>Olausen v. State, Docket No. 36918 (Order of Affirmance, December 10, 2002).

<sup>5</sup>Olausen spends several paragraphs in his opening brief arguing that he has a right to appeal the district court’s order denying him postconviction relief and that his appeal to this court was timely filed. Olausen’s appeal has been filed and docketed, and the State concedes that his appeal is properly before this court. This matter is not at issue.

First, Olausen contends that the district court improperly denied his claim that the three-judge panel in 1989 failed to issue a proper judgment of conviction when resentencing him after his second penalty hearing. We disagree.

Although the district court reached the merits of Olausen's claim, it was procedurally barred. His instant petition was filed in 2006, nearly ten years after the remittitur issued from his direct appeal. The petition was untimely.<sup>6</sup> And Olausen had filed in 1997 a postconviction habeas corpus petition that was denied by the district court. His instant petition was also successive.<sup>7</sup> Olausen has failed to demonstrate good cause and prejudice to overcome the procedural bars to his claim.<sup>8</sup> Nor has he demonstrated that invoking the procedural bars would result in a fundamental miscarriage of justice.<sup>9</sup> Both the district court and the State apparently overlooked the applicable procedural bars to Olausen's claim. Because Olausen's petition was procedurally barred, and he has failed to overcome the bars, we explicitly conclude that his petition should have been denied on this basis.<sup>10</sup>

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<sup>6</sup>See NRS 34.726(1).

<sup>7</sup>See NRS 34.810(2).

<sup>8</sup>See NRS 34.726(1); NRS 34.810(3).

<sup>9</sup>Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

<sup>10</sup>See generally Harris v. Reed, 489 U.S. 255, 263 (1989) (holding that procedural default does not bar federal review of a claim on the  
*continued on next page . . .*

We note, however, that the district court correctly determined that Olausen's petition lacked merit, and we affirm the district court's ruling on that separate, independent ground.<sup>11</sup>

NRS 176.105 provides that a judgment of conviction must contain a plea, verdict or finding, adjudication and sentence, credit for time served, be signed, and entered by the clerk. Here, although the 1989 "Findings, Determinations and Imposition of Sentence" that Olausen attacks is not specifically labeled as a judgment of conviction, a specific label is not mandated by NRS 176.105. We conclude that the district court correctly found that the document contained the essential elements required to be a valid judgment of conviction pursuant to NRS 176.105. Thus, the district court properly denied Olausen relief on this claim.

Second, Olausen contends that the district court's written order denying his instant postconviction habeas corpus petition was deficient because it did not contain findings of fact and conclusions of law as required by NRS 34.830 and NRAP 4(b)(2). We disagree. Our review of the order entered by the district court reveals that it contained specific factual findings and cited to the law relevant to Olausen's claim—NRS

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*... continued*

merits unless the state court rendering judgment relied "clearly and expressly" on the procedural bar) (internal citations omitted).

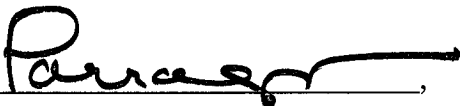
<sup>11</sup>Id. at 264 n. 10 (holding that as long as the state court explicitly involves a state procedural bar, "a state court need not fear reaching the merits of a federal claim in an alternative holding") (emphasis in original).

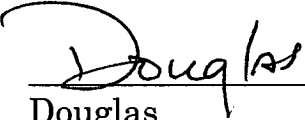
176.105. We conclude that the district court's order complied with NRS 34.830 and NRAP 4(b)(2). Olausen is not entitled to relief on this claim.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>12</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Connie J. Steinheimer, District Judge  
Jenkins Law Office  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>12</sup>We have received Olausen's proper person motion to file supplemental briefing and his proper person supplemental opening brief. These documents were submitted to this court on August 13, 2007. Olausen is represented by counsel in this matter, and we decline to grant Olausen permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action and shall not consider the proper person documents Olausen has submitted in this matter.