

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNNY CAMARGO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49111

JOHNNY CAMARGO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49112

FILED

AUG 09 2007

JANETTE M. BOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court dismissing post-conviction petitions for writs of habeas corpus. We elect to consolidate these appeals for disposition.¹ Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

On March 28, 2001, the district court convicted appellant, pursuant to a jury trial, of one count of robbery with the use of a deadly weapon in district court case number CR002019. The district court sentenced appellant to serve two consecutive terms of 72 to 180 months in

¹See NRAP 3(b).

the Nevada State Prison. This court affirmed the judgment of conviction on appeal.² The remittitur issued on September 11, 2001.

On March 28, 2001, the district court convicted appellant, pursuant to a jury trial, of one count of robbery with the use of a deadly weapon in district court case number CR002061. The district court sentenced appellant to serve two consecutive terms of 24 to 180 months in the Nevada State Prison. This sentence was imposed to run consecutively to the sentence imposed in district court case number CR002019. No direct appeal was taken from this judgment of conviction.

On June 7, 2002, appellant filed a post-conviction petition for a writ of habeas corpus in both district court cases. The district court appointed counsel to represent appellant in the post-conviction proceedings, and post-conviction counsel filed a supplement to the petition. The State opposed the petition. In May 2004, the district court denied the petition in both district court cases. This court affirmed the orders of the district court on appeal.³

On June 1, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in each district court case. The State filed a motion to dismiss the petitions. Pursuant to NRS 34.750

²Camargo v. State, Docket No. 37791 (Order of Affirmance, August 15, 2001).

³Camargo v. State, Docket No. 43387 (Order of Affirmance, December 1, 2004); Camargo v. State, Docket No. 43388 (Order of Affirmance, November 17, 2004).

and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On February 8, 2007, the district court dismissed appellant's petition in district court case number CR002019, and on February 13, 2007, the district court dismissed appellant's petition in district court case number CR002061. These appeals followed.

Appellant filed his petitions almost five years after this court issued the remittitur from his direct appeal in district court case number CR002019 and more than five years after entry of the judgment of conviction in district court case number CR002061. Thus, appellant's petitions were untimely filed.⁴ Moreover, appellant's petitions were successive because he had previously filed post-conviction petitions for writs of habeas corpus in the district court raising the same claims.⁵ Appellant's petitions were procedurally barred absent a demonstration of good cause and prejudice.⁶

In an attempt to excuse his procedural defects, appellant argued that his post-conviction counsel failed to present and argue all grounds to the courts in the first habeas corpus proceedings. Appellant appeared to argue that raising the claims again was required for exhaustion purposes. Finally, appellant appeared to suggest that his

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).

procedural defects should be excused because he had limited fluency in the English language, a minimal education and the first petition was prepared by another inmate.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause to excuse his procedural defects. Appellant cannot demonstrate good cause in the instant case based upon a claim of ineffective assistance of post-conviction counsel as the appointment of counsel in the prior proceeding was discretionary.⁷ Further, failure to exhaust state remedies is not good cause to file a late and successive petition raising the same claims abandoned in the first post-conviction proceedings. Appellant failed to demonstrate that any alleged language barrier existed in the instant case, and thus, this did not constitute good cause in the instant case.⁸ Appellant's limited education and poor assistance from an inmate law clerk likewise do not constitute good


⁷See Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997); McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996).

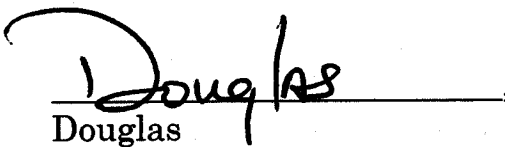
⁸See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense). We note that the presentence investigation report indicates that appellant was born in King City, California and that appellant had completed the tenth grade. There is no notation in the transcripts or minutes that an interpreter was present or required in the instant case. Further in the transcript on appellant's motion seeking withdrawal of trial counsel, the district court noted that appellant had submitted a handwritten motion to the court and appellant spoke at some length during the hearing.

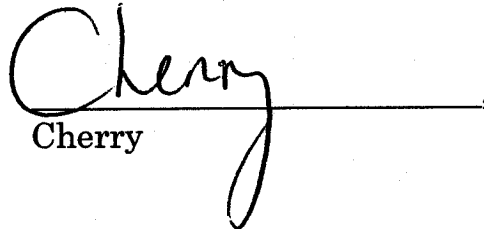
cause.⁹ Therefore, we affirm the order of the district court dismissing appellant's petition as procedurally barred.

Having reviewed the records 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 judgments of the district court AFFIRMED.¹¹


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

⁹See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

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 these matters, 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. Robert H. Perry, District Judge
Johnny Camargo
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk