

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL T. WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49447

FILED

NOV 14 2007

DIANE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Valorie Vega, Judge.

On June 16, 2000, the district court convicted appellant, pursuant to a jury verdict, of three counts of sexual assault on a minor under the age of fourteen, one count of sexual assault on a minor under the age of sixteen and one count of attempted sexual assault on a minor under the age of sixteen. The district court sentenced appellant to serve a total of two consecutive terms of life in the Nevada State Prison with the possibility of parole, the remaining sentences to run concurrently. This court affirmed the judgment of conviction on appeal.¹ The remittitur issued on March 12, 2002.

¹Williams v. State, Docket No. 36414 (Order of Affirmance, February 13, 2002).

Appellant filed a timely proper person post-conviction petition for a writ of habeas corpus and an amended petition in the district court. The State opposed the petition. On April 11, 2003, the district court denied the petition. This court affirmed the order of the district court on appeal.²

On March 13, 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, arguing that the petition was untimely and successive. On June 16, 2006, the district court dismissed the petition. This court dismissed the subsequent appeal for lack of jurisdiction as the notice of appeal was untimely filed.³

On January 17, 2007, 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, arguing that the petition was untimely and successive. 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 April 18, 2007, the district court dismissed appellant's petition. This appeal followed.

²Williams v. State, Docket No. 41365 (Order of Affirmance, February 19, 2004).

³Williams v. State, Docket No. 47769 (Order Dismissing Appeal, November 9, 2006).

In his petition, appellant claimed that the commitment and order of the justice court binding the matter over to the district court for trial was fatally defective because the original criminal complaint did not contain the allegations of sexual assault on a minor under the age of sixteen and attempted sexual assault on a minor under the age of sixteen and because the amended complaint did not contain the attempted sexual assault allegation. Appellant further claimed that the justice court failed to arraign him on these allegations, thus violating his due process rights and causing him to be unlawfully bound over to the district court.

Appellant filed his petition almost five years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was an abuse of the writ because he raised new and different grounds for relief from those raised in the prior petitions.⁵ Further, his claims were subject to the procedural bar of waiver as they should have been raised on direct appeal.⁶ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁷

⁴See NRS 34.726(1).

⁵See NRS 34.810(2).

⁶See NRS 34.810(1)(b)(2).

⁷See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

In an attempt to excuse his procedural defects, appellant argued that these claims were previously unknown to him and that these claims established a jurisdictional defect.

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing the petition as procedurally barred. These claims were reasonably available to appellant within the time period for filing a timely post-conviction petition for a writ of habeas corpus, and appellant failed to demonstrate that an impediment external to the defense prevented him from raising the claims in a timely petition.⁸ Further, appellant failed to demonstrate any jurisdictional defect in the bind over in the instant case. A justice of the peace may bind over allegations if it appears from the evidence presented that there is probable cause to believe that an offense has been committed and that the defendant has committed it, and the accused may be held to answer for an offense other than that charged in the complaint.⁹ The State sought and was permitted to amend the original criminal complaint based upon the

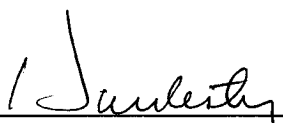
⁸See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

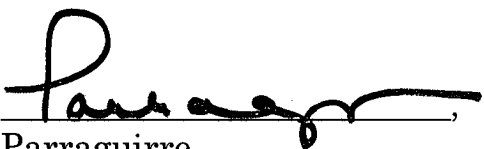
⁹See NRS 171.206; see also State v. Pansey, 61 Nev. 330, 342, 128 P.2d 464, 467-68 (1942) (holding that under the provisions of a former statute relating to the procedure following a preliminary examination that an accused may be held to answer for a public offense other than that charged in the complaint); Singleton v. Sheriff, 86 Nev. 590, 593, 471 P.2d 247, 249 (1970) (restating the holding in Pansey and acknowledging that the former statute referred to in Pansey was comparable to NRS 171.206).

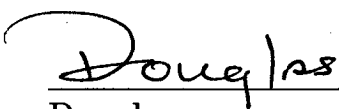
evidence presented at the preliminary hearing. Therefore, we affirm the order of the district court.

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.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Valorie Vega, District Judge
Michael T. Williams
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).