

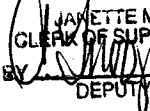
IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWIN HODGKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49946

FILED

DEC 27 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Jackie Glass, Judge.

On May 3, 2002, the district court convicted appellant, pursuant to an Alford plea,¹ of one count of attempted murder with the use of a deadly weapon resulting in substantial bodily harm. The district court sentenced appellant to serve in the Nevada State Prison a term of 65 to 240 months, with an equal and consecutive term for the use of a deadly weapon. Appellant did not file a direct appeal.

On December 26, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel, who filed a supplemental petition. The district court denied the petition without conducting an evidentiary hearing, and this court affirmed the district court's order on appeal.²

¹See North Carolina v. Alford, 400 U.S. 25 (1970).

²Hodgkins v. State, Docket No. 42768 (Order of Affirmance, November 15, 2004).

On April 16, 2007, 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 July 16, 2007, the district court denied appellant's petition. This appeal followed.

Appellant filed his second petition approximately 5 years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.⁴ Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.⁵ Appellant failed to set forth any cause for the delay; therefore, we conclude that the district court did not err in denying the petition.⁶

³See NRS 34.726(1).

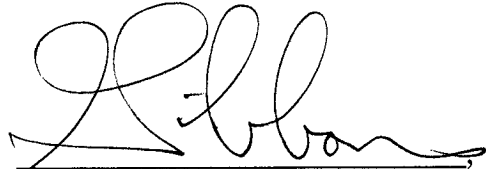
⁴See NRS 34.810(2). In his second petition, appellant claimed he received ineffective assistance of counsel. While he raised this same claim in his first petition, he abandoned it on his first post-conviction appeal as the Fast Track Statement prepared by his post-conviction counsel did not raise the issue.

⁵See NRS 34.726(1); NRS 34.810(3).

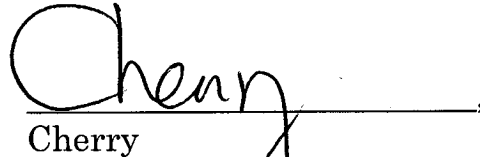
⁶Notably, appellant was not entitled to the effective assistance of post-conviction counsel; therefore, post-conviction counsel's failure to litigate an issue on appeal is not good cause. See Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997); McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996).

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.⁷ Accordingly, we

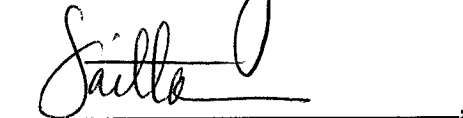
ORDER the judgment of the district court AFFIRMED.⁸

 J.

Gibbons

 J.

Cherry

 J.

Saitta

cc: Hon. Jackie Glass, District Judge
Edwin Hodgkins
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We 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.