

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND PAUL ROSAS,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
BILL DONAT,
Respondent.

No. 50265

FILED

NOV 07 2008

TRACEE K. LINDEMAN
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 appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On June 2, 2000, the district court convicted appellant, pursuant to a jury verdict, of first-degree kidnapping with the use of a deadly weapon, murder with the use of a deadly weapon, and conspiracy to commit murder. The district court sentenced appellant to serve four consecutive terms of life in the Nevada State Prison without the possibility of parole and an additional consecutive term of 48 to 120 months. This court affirmed appellant's conviction on direct appeal.¹ The remittitur issued on June 26, 2001.

¹Rosas v. State, Docket No. 36447 (Order of Affirmance, May 29, 2001).

On March 11, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel, and several supplements and addendums to his petition were filed. On November 23, 2004, the district court denied appellant's petition after conducting an evidentiary hearing. This court affirmed the district court's order on appeal.²

On July 9, 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 September 10, 2007, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition six years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Moreover, appellant's petition was successive because he had previously filed a petition for a writ of habeas corpus that was denied on the merits.⁴ Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.⁵

²Rosas v. State, Docket No. 44367 (Order of Affirmance, May 2, 2006).

³See NRS 34.726(1).

⁴See NRS 34.810(1)(b); NRS 34.810(2). Appellant repeated the following claims: (1) the district court erroneously permitted the perjured and inconsistent testimony of Bradley Kimes; (2) the district court erroneously permitted the introduction of appellant's statements to the police in violation of Miranda v. Arizona, 384 U.S. 436 (1966); (3) the

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Appellant argued that his procedural defects should be excused because the grounds asserted needed to be exhausted in state court and his post-conviction counsel failed to argue the grounds that needed to be exhausted. Appellant also claimed that his appellate counsel did not adequately investigate witnesses and evidence in order to present his direct appeal. Appellant's claim regarding his appellate counsel's failure to investigate was available during the statutory period and at the time of appellant's prior petition, as evidenced by his filing of a prior petition based on the same grounds during that time, and thus it did not establish cause for appellant's delay in filing his petition.⁶ Further, raising claims for the purpose of exhaustion does not constitute good cause. Therefore, we conclude that appellant did not demonstrate good cause sufficient to overcome the procedural bars to the instant petition.

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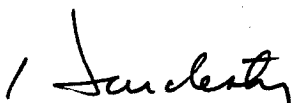
district court erroneously permitted the State to introduce uncorroborated accomplice testimony; (4) the district court did not have jurisdiction to proceed based on the unproven kidnapping charge; and (5) ineffective assistance of appellate counsel.

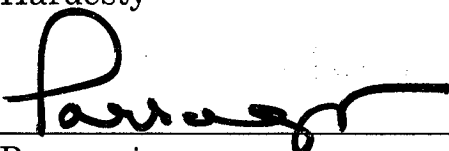
⁵See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

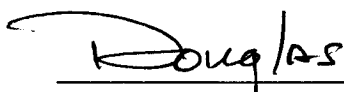
⁶Hathaway v. State, 119 Nev. 248, 253, 71 P.3d 503, 506 (2003) (holding that claims that were reasonably available during the statutory period for filing a petition do not constitute good cause for filing an untimely petition).

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.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Brent T. Adams, District Judge
Raymond Paul Rosas
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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