

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEWELL SMITH A/K/A JAMES EARL  
CALDWELL,

No. 34540

Appellant,

**FILED**

vs.

SEP 13 2000

THE STATE OF NEVADA,

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. P. [Signature]*  
CHIEF DEPUTY CLERK

Respondent.

JEWELL SMITH, A/K/A JAMES EARL  
CALDWELL,

No. 34685

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying appellant's post-conviction petition for a writ of habeas corpus and appellant's "motion to dismiss and or correct illegal sentence." We elect to consolidate these appeals for disposition. See NRAP 3(b).

On March 24, 1998, the district court convicted appellant, pursuant to a jury trial, of thirteen counts of burglary (Counts I-XIII), eight counts of drawing and passing checks with no funds on deposit (Counts XIV-XXI), and one count of attempted drawing and passing checks with no funds on deposit (Count XXII). The district court imposed the following sentences: (1) for each of Counts I-XIII, a maximum term of seventy two months in the Nevada State Prison with a minimum parole eligibility of sixteen months, the term for each count to run concurrently; (2) for Counts XIV-XXI, a maximum term of forty-eight months in the Nevada State Prison with a minimum parole eligibility of twelve months, Count XIV to run

consecutively to Count XIII and Counts XV-XXI to run concurrently to Count XIV and each other; (3) for Count XXII, one year in the Clark County Detention Center, to run concurrently with Count XXI. This court dismissed appellant's direct appeal. *Smith v. State*, Docket No. 32081 (Order Dismissing Appeal, September 11, 1998). The remittitur issued on September 30, 1998.

On December 10, 1997, after the jury rendered its verdict but prior to sentencing and entry of the judgment of conviction, appellant filed a proper person petition for a writ of habeas corpus in the district court. On December 22, 1997, appellant filed an amended proper person petition for a writ of habeas corpus in the district court.<sup>1</sup> The State opposed the petition. On January 14, 1998, the district court denied appellant's petition and amended petition. Appellant did not appeal the district court's order denying these petitions.

On January 7, 1998, after the jury rendered its verdict but prior to sentencing and entry of the judgment of conviction, appellant filed another petition for a writ of habeas corpus.<sup>2</sup> The district court denied appellant's petition. Appellant did not appeal from the district court's decision.

On March 20, 1998, after sentencing but prior to entry of the written judgment of conviction, appellant filed a proper person petition for a writ of mandamus and prohibition in the district court.<sup>3</sup> The State opposed the petition. On April 22, 1998, the district court denied appellant's petition. Appellant did not appeal the district court's order denying this petition.

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<sup>1</sup>In his petitions, appellant, inter alia, challenged the jurisdiction of the district court.

<sup>2</sup>In his petition, appellant again challenged the jurisdiction of the district court.

<sup>3</sup>In his petition, appellant again challenged the jurisdiction of the district court.

On April 16, 1999,<sup>4</sup> appellant filed a proper person post-conviction petition for a writ of habeas corpus. On April 30, 1999, appellant filed a supplement to his petition. The State opposed the petition. Appellant filed a reply to the State's opposition. 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 2, 1999, the district court denied appellant's petition. Appellant's appeal is docketed in this court in Docket No. 34540.

On July 23, 1999, appellant filed a "motion to dismiss and or correct an illegal sentence" in the district court. The State opposed the motion. On November 15, 1999, the district court denied appellant's motion. Appellant's appeal is docketed in this court in Docket No. 34685.

Docket No. 34540

In his petition, appellant contended, inter alia, that his appellate counsel was ineffective for failing to challenge the jurisdiction of the district court on direct appeal. We conclude that appellant is not entitled to relief because this claim lacked merit. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984); see also Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113-14 (1996). Appellant's appellate counsel did challenge the jurisdiction of the district court on direct appeal, and this court rejected that challenge. In fact, appellant's claim is directly rebutted by the documents he attached in support of his claim.

As to appellant's remaining contentions, appellant's petition is successive because he has pursued a direct appeal and previously filed four post-conviction petitions. See NRS 34.810(1)(b)(2), (3). Therefore, the remaining claims in

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<sup>4</sup>On May 11, 1999, an identical habeas corpus petition was filed in the district court.

appellant's petition are procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.810(1)(b).

Appellant argued that his procedural defect should be excused because he is unschooled in the law and has made previous unsuccessful attempts to raise these claims. Appellant further argued that he received ineffective assistance of counsel. Finally, appellant argued that he demonstrated a fundamental miscarriage of justice because the district court lacked jurisdiction to convict appellant. We conclude that the district court did not err in determining that appellant failed to demonstrate adequate cause. See *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994); *Phelps v. Director, Prisons*, 104 Nev. 656, 764 P.2d 1303 (1988). Appellant's claim that the district court was without jurisdiction cannot excuse his procedural defects because this court has already determined that this claim lacked merit. Thus, we conclude that appellant did not demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice. See *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996) (stating that a petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice). Therefore, we conclude that the district court properly denied appellant's petition.

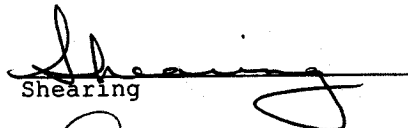
Docket No. 34685

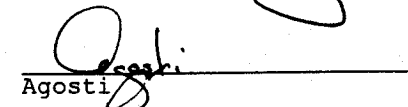
In his motion, appellant argued that his sentence was illegal because the district court lacked jurisdiction to convict appellant. As discussed above, this court previously rejected appellant's challenge to the jurisdiction of the district court. The doctrine of the law of the case prevents any further relitigation of this issue. See *Hall v. State*, 91 Nev. 314, 535 P.2d 797 (1975). Therefore, we conclude that the district court did not err in denying appellant's motion.

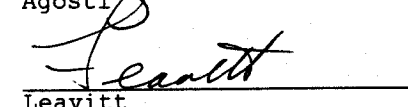
Conclusion

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. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976). Accordingly, we affirm the orders of the district court.

It is so ORDERED.<sup>5</sup>

  
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Shearing J.

  
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Agosti J.

  
\_\_\_\_\_  
Leavitt J.

cc: Hon. Ronald D. Parraguirre, District Judge  
Attorney General  
Clark County District Attorney  
Jewell Smith  
Clark County Clerk

<sup>5</sup>We note that appellant has repeatedly challenged the jurisdiction of the district court and that this court has rejected this challenge. We caution appellant that a prisoner may forfeit all deductions of time earned by the prisoner if the court finds that the prisoner has filed a document in a civil action for an "improper purpose." See NRS 209.451(1)(d)(1). A "civil action" includes a petition for a writ of habeas corpus filed on or after October 1, 1999. See 1999 Nev. Stat., ch. 59, §§ 5,6, at 146-47. Further, pursuant to NRS 22.010(7), a district court may find an individual in contempt of court for "[a]busing the process or proceedings of the court . . . ."