

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMAA ANTHONY CINQUE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50487

FILED

APR 07 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
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; Steven P. Elliott, Judge.

On August 28, 2003, the district court convicted appellant in district court case number CR030873, pursuant to a guilty plea, of one count of burglary. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of five to twenty years in the Nevada State Prison. This court affirmed appellant's conviction and sentence on direct appeal.<sup>1</sup> The remittitur issued on March 23, 2004.

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<sup>1</sup>Cinque v. State, Docket Nos. 42123 and 42125 (Order of Affirmance, February 25, 2004).

On August 28, 2003, the district court convicted appellant in district court case number CR030888, pursuant to a guilty plea, of three counts of burglary. The district court sentenced appellant to serve two consecutive terms, and one concurrent term, of four to ten years in the Nevada State Prison. These sentences were imposed to run consecutive to the sentence imposed in district court case number CR030873. This court affirmed appellant's conviction and sentence on direct appeal.<sup>2</sup> On June 11, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court, which the district court denied. This court affirmed the order of the district court on appeal.<sup>3</sup>

On September 7, 2007, appellant filed a 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 October 18, 2007, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than two years after this court issued the remittitur from his direct appeal. Thus, appellant's

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<sup>2</sup>Id.

<sup>3</sup>Cinque v. State, Docket No. 46012 (Order of Affirmance, February 24, 2006).

petition was untimely filed.<sup>4</sup> Moreover, appellant's petition was successive and constituted an abuse of the writ as several of the claims set forth in the present petition could have been raised in appellant's previous petition.<sup>5</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>6</sup>

In an attempt to excuse his procedural defects, appellant argued that he filed the untimely petition in an effort to exhaust his claim in state court. Exhausting state remedies does not constitute good cause to support the filing of an untimely petition.<sup>7</sup> Therefore, the district court did not err in denying appellant's claim.

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<sup>4</sup>See NRS 34.726(1).

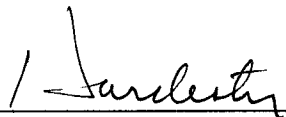
<sup>5</sup>See NRS 34.810(2). Appellant's claims that his counsel was ineffective for failing to ensure that the district court was aware that he was under the influence of psychotropic medications when he pleaded guilty and that his guilty plea was not knowingly and voluntarily entered were successive.

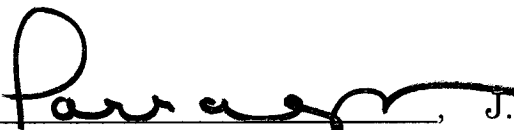
<sup>6</sup>See NRS 34.726(1); NRS 34.810(1)(b).

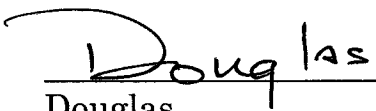
<sup>7</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

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.<sup>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>9</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

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<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>9</sup>We 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.

cc: Hon. Steven P. Elliott, District Judge  
Jamaa Anthony Cinque  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk