

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAURICE SHUM SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50521

**FILED**

APR 22 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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

On September 29, 1998, the district court convicted appellant, pursuant to a guilty plea, of first-degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.<sup>1</sup>

On September 21, 1999, 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 December 15, 1999, the district court denied the petition. On appeal, this court reversed the decision of the

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<sup>1</sup>Smith v. State, Docket No. 33868 (Order Dismissing Appeal, March 29, 1999).

district court and remanded for an evidentiary hearing.<sup>2</sup> Upon remand, the district court appointed counsel and conducted an evidentiary hearing. The district court denied the petition, and this court affirmed the order of the district court on appeal.<sup>3</sup>

On August 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 arguing that the petition was untimely and successive. Moreover, the State specifically pleaded laches. 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 November 19, 2007, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant raised three grounds for relief: (1) his rights were denied because as a juvenile defendant his parents were not present and he was not assisted by counsel at every critical stage of the proceedings; (2) his guilty plea was not valid because the first-degree murder charge was missing the elements of arson, rape, burglary and/or robbery; and (3) the statute permitting a juvenile's certification without notice, without assistance of counsel, and without a statement of reasons was unconstitutional and various other errors relating to his certification.

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<sup>2</sup>Smith v. State, Docket No. 35766 (Order of Reversal and Remand, December 12, 2001).

<sup>3</sup>Smith v. State, Docket No. 39715 (Order of Affirmance, May 7, 2003).

Appellant filed his petition almost nine years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.<sup>4</sup> Moreover, appellant's petition was an abuse of the writ because he had raised new and different claims than those raised in his previous post-conviction petition for a writ of habeas corpus.<sup>5</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>6</sup> Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.<sup>7</sup>

In an attempt to excuse his procedural defects, appellant argued that his claims were jurisdictional and that he did not know of his claims until he met a prison writ-writer who informed him that he could raise jurisdictional claims at any time. Appellant further claimed that his trial counsel was ineffective for failing to challenge these errors. Appellant further claimed he did not have the knowledge to prepare an acceptable petition or motion prior to the filing of the instant petition.

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition as procedurally barred and barred by laches. Appellant failed to demonstrate any jurisdictional defect as the juvenile court did not have jurisdiction over the crime of murder; thus, jurisdiction was properly vested in the district court after appellant waived his preliminary hearing and the case

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

<sup>5</sup>See NRS 34.810(2).

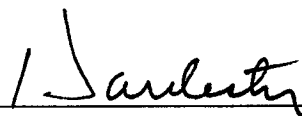
<sup>6</sup>See NRS 34.726(1); NRS 34.810(3).

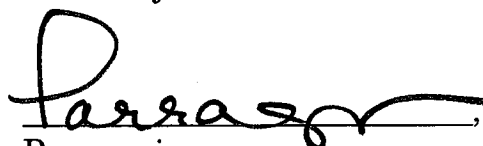
<sup>7</sup>See NRS 34.800(2).

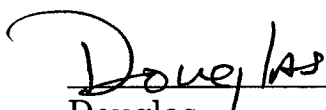
was bound over to the district court.<sup>8</sup> Appellant failed to demonstrate that an impediment external to the defense prevented him from raising these claims in his first, timely petition.<sup>9</sup> Finally, appellant failed to overcome the presumption of prejudice to the State. Therefore, we 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.<sup>10</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

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<sup>8</sup>See 1995 Nev. Stat., ch. 444, § 44, at 1371-72 (former NRS 62.040); see also Kell v. State, 96 Nev. 791, 618 P.2d 350 (1980).

<sup>9</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

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

cc: Hon. David B. Barker, District Judge  
Maurice Shum Smith  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk