

IN THE SUPREME COURT OF THE STATE OF NEVADA

GISTARVE RUFFIN, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50629

FILED

DEC 17 2008

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On August 9, 1994, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary (a felony) and one count of possession of burglary tools (a gross misdemeanor) and adjudicated appellant a habitual criminal on the felony count. The district court sentenced appellant to serve a term of ten years for the burglary count, one year in the Washoe County Jail for the burglary tools count, and a life term for the habitual criminal count. On direct appeal, this court affirmed the conviction, but determined that the district court erred in sentencing appellant to serve a separate sentence for being a habitual criminal and directed the district court to vacate the sentence and amend the judgment of conviction to provide for a term of life with the possibility

of parole for the burglary count.¹ The remittitur issued on January 9, 1996.

On January 29, 1996, the district court entered an amended judgment of conviction imposing the terms as directed by this court in the order of remand. On March 22, 1996, the district court entered a corrected amended judgment of conviction. Appellant filed an appeal from the amended judgment of conviction, but later voluntarily dismissed the appeal.²

On December 17, 1996, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On March 21, 1997, the district court entered an order dismissing claims 7, 10, 11, 13, and 14. The district court further ordered a response to the remaining claims. On May 5, 1997, the State filed a motion to dismiss the petition, to which appellant filed a response on May 22, 1997. On June 27, 1997, the district court dismissed the petition. This appeal followed.³

The district court dismissed the petition without prejudice on the ground that contrary to NRS 34.370(4) appellant had not attached a

¹Ruffin v. State, Docket No. 26230 (Order of Remand, December 19, 1995).

²Ruffin v. State, Docket No. 28239 (Order Dismissing Appeal, October 24, 1996).

³We note that appellant did not file a notice of appeal until November 29, 2007, more than ten years after the district court's June 27, 1997 order. The November 29, 2007 notice of appeal was timely filed from the June 27, 1997 order because the clerk of the district court never served notice of entry of the order on appellant. See Lemmond v. State, 114 Nev. 219, 954 P.2d 1179 (1998).

copy of the entire trial transcript and the court could not “adequately evaluate [appellant’s] claims of counsel’s error in the trial proceedings based upon selected transcript excerpts considered outside the context of the entire proceeding.” However, NRS 34.735, which sets forth the form for filing a post-conviction petition for a writ of habeas corpus and which sets forth the instructions for a post-conviction petitioner, does not require that a petitioner filing a post-conviction petition for a writ of habeas corpus attach copies of transcripts. In fact, a petitioner is specifically informed in the form petition that “[a]dditional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief.”⁴ Nothing in the form petition set forth in NRS 34.735 requires the petitioner to attach transcripts to the petition; rather, all that is required is that petitioner support his claims with specific facts.⁵ The fact that there is an inconsistency between the provision in NRS 34.370(4) requiring a petitioner to attach copies of “[a]ffidavits, records or other evidence supporting the allegations in the petition” and the provisions in NRS 34.735, which sets forth the form petition and provides detailed instructions for the petitioner to follow in filing a post-conviction petition, must be resolved for appellant. Further, it is unclear why the failure to attach the entire transcript to the petition would prevent the district court from reviewing the claims raised in the petition when the transcripts at issue were contained in the district court’s record on the case. We note that requiring a petitioner to attach the entire

⁴NRS 34.735.

⁵Id.

transcript would require petitioners, most often indigent petitioners, to incur great costs in copying those documents as the petitioners are instructed in NRS 34.735 to file the original and one copy with the district court and serve one copy of the petition on the respondent, the Attorney General's Office, and the district attorney of the county in which the petitioner was convicted. Therefore, we reverse the decision of the district court to dismiss the December 17, 1996 petition and remand this matter for the district court to consider the petition on the merits.

We note that after the district court dismissed the December 17, 1996 petition without prejudice, appellant unsuccessfully pursued post-conviction relief in two additional post-conviction petitions for writs of habeas corpus. On March 9, 1998, appellant filed a corrected post-conviction petition for a writ of habeas corpus in the district court, and the district court denied the petition as untimely filed. Although appellant appealed that decision and was appointed counsel to assist him with the appeal, the appeal was voluntarily withdrawn.⁶ Appellant then filed a third post-conviction petition for a writ of habeas corpus and with the assistance of counsel unsuccessfully litigated that petition in the district court. This court affirmed the order of the district court on appeal primarily on the basis that the petition was untimely filed.⁷ In resolving the December 17, 1996 petition, the district court may consider the

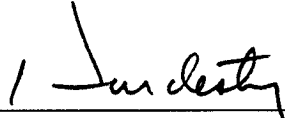
⁶Ruffin v. State, Docket No. 32205 (Order Dismissing Appeal, March 2, 1999).

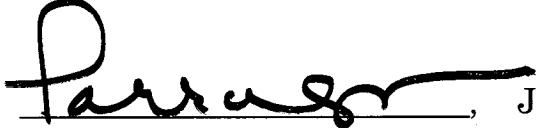
⁷Ruffin v. State, Docket No. 37666 (Order of Affirmance, August 23, 2002). This court further stated that the district court did not err in denying the claims for relief.

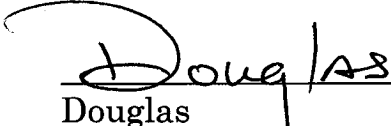
evidentiary hearing resolving the subsequent petition to the extent that appellant raised duplicative claims in the original and subsequent petitions.

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.⁸ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

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

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