

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN BROOKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34575

FILED

FEB 22 2001

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

On October 5, 1990 the district court convicted appellant, pursuant to a jury verdict, of two counts of burglary. The district court adjudicated appellant a habitual criminal, pursuant to NRS 207.010, and sentenced him to serve two concurrent terms of life without the possibility of parole in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹

On February 7, 1991, appellant filed a petition for post-conviction relief pursuant to former NRS 177.315. On March 13, 1991 the district court denied appellant's petition because his direct appeal was pending with this court. This court remanded appellant's subsequent appeal.²

On April 9, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the

¹Brooks v. State, Docket No. 21722 (Order Dismissing Appeal, December 20, 1991). The remittitur issued on January 8, 1992.

²Brooks v. State, Docket No. 22285 (Order of Remand, September 30, 1991).

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 July 19, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than seven 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 post-conviction relief pursuant to former NRS 177.315.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

In an attempt to excuse his procedural defects, appellant challenged the jurisdiction of the district court based upon his belief that the justice court lacked jurisdiction to conduct a preliminary hearing because the justice of the peace was not a licensed attorney as required by NRS 4.010. Appellant argued that he raised this claim in a petition for post-conviction relief in the district court and in an original petition filed in this court and that this court, in its order, recommended him to take his case to state district court, and stated that petitioner's remedy, if any, is in the district court and that petitioner may then appeal to this court from an adverse decision. Based upon our review of the record on appeal, we conclude that the district court did not err in finding that these reasons do not constitute good cause and prejudice to

³See NRS 34.726(1).

⁴See NRS 34.810(2).

⁵See NRS 34.726(1); NRS 34.810(3).

excuse the procedural defects. Appellant failed to demonstrate that the visiting justice of the peace was not qualified.⁶

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 affirm the order of the district court.

It is so ORDERED.⁸

Young J.
Young
Rose J.
Rose
Becker J.
Becker

cc: Hon. Ronald D. Parraguirre, District Judge
Attorney General
Clark County District Attorney
Kevin Brooks
Clark County Clerk

⁶See NRS 4.340.

⁷See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

⁸We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.