

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGER WILLIAM HULL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50840

**FILED**

MAY 15 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 denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On April 26, 2001, the district court convicted appellant, pursuant to a jury verdict, of one count of lewdness with a child under the age of 14 years and one count of sexual assault. The district court sentenced appellant to serve in the Nevada State Prison a term of life with the possibility of parole after serving 10 years for lewdness and a consecutive term of life with the possibility of parole after serving 20 years for sexual assault. This court affirmed the judgment of conviction and sentence on direct appeal.<sup>1</sup> The remittitur issued on April 8, 2003.

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<sup>1</sup>Hull v. State, Docket No. 37953 (Order of Affirmance, January 31, 2003).

On May 8, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to assist appellant, and counsel filed a supplemental post-conviction petition for a writ of habeas corpus. On September 10, 2004, the district court denied the petition. This court affirmed the order of the district court on appeal.<sup>2</sup>

On October 16, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 denied appellant's petition. This appeal followed.

Appellant filed his petition more than four years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>3</sup> Moreover, appellant's petition was an abuse of the writ because he raised new and different claims from those raised in his first post-conviction petition for a writ of habeas corpus.<sup>4</sup> Appellant's

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<sup>2</sup>Hull v. State, Docket No. 44376 (Order of Affirmance, September 14, 2005).

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

<sup>4</sup>See NRS 34.810(1)(b)(2); NRS 34.810(2).

petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>5</sup>

Appellant utilized a form petition that was not in compliance with NRS 34.735. Examining the petition, it appears that appellant claimed that he had good cause to excuse his procedural defects because he received ineffective assistance of post-conviction counsel in the first proceedings and because the district court lacked jurisdiction over the case.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause to excuse his procedural defects. Appellant failed to demonstrate that an impediment external to the defense prevented him from raising all of his claims in his first, timely post-conviction petition for a writ of habeas corpus.<sup>6</sup> Because appellant was not entitled to the appointment of post-conviction counsel, a claim that post-conviction counsel was ineffective does not constitute good cause.<sup>7</sup> Finally, appellant's jurisdictional claims were patently without merit as the crimes were committed in Washoe County and the charges were bound over to the district court.

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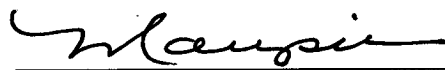
<sup>5</sup>See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

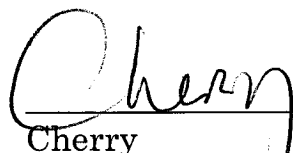
<sup>6</sup>See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

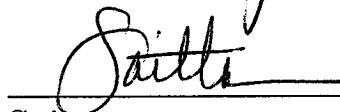
<sup>7</sup>See Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997); McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996).

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.  
Maupin

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Janet J. Berry, District Judge  
Roger William Hull  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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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.