

IN THE SUPREME COURT OF THE STATE OF NEVADA

FELTON L. MATTHEWS, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50871

**FILED**

AUG 12 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; Donald M. Mosley, Judge.

On May 13, 2002, the district court convicted appellant Felton L. Matthews, Jr., pursuant to a guilty plea, of two counts of lewdness with a child under the age of 14. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after 10 years. This court affirmed appellant's judgment of conviction and sentence on appeal.<sup>1</sup> The remittitur issued on August 5, 2003.

On May 17, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On December 9, 2004, the district court denied appellant's petition. On

---

<sup>1</sup>Matthews v State, Docket No. 39717 (Order of Affirmance, July 9, 2003).

appeal this court affirmed the district court's denial of appellant's petition.<sup>2</sup>

On January 23, 2006, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. On May 22, 2006, the district court denied appellant's petition. On appeal this court affirmed the district court's denial of appellant's petition.<sup>3</sup>

On October 23, 2007, appellant filed a third 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 January 10, 2008, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant claimed that the victim was forced by his ex-wife to report false abuse allegations because his ex-wife wanted to use the criminal charges to gain more child support. Appellant claimed that the State was aware of the family court proceedings involving his ex-wife, and used this knowledge to withhold exculpatory evidence regarding his ex-wife's motives for reporting the abuse of the victim. Appellant claimed that had he known of this exculpatory evidence, he would not have pleaded guilty; therefore, he should be entitled to withdraw his guilty plea and proceed to trial. Further, appellant claimed that he should only

---

<sup>2</sup>Matthews v. State, Docket No. 43822 (Order of Affirmance, March 10, 2005).

<sup>3</sup>Matthews v. State, Docket No. 47145 (Order of Affirmance, October 3, 2006).

have been convicted of one charge because both counts arose from the same act.

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>4</sup> Moreover, appellant's petition was successive because he had previously filed two post-conviction petitions for writs of habeas corpus.<sup>5</sup> Further, appellant's petition constituted an abuse of the writ as his claims were new and different from those claims raised in his previous post-conviction petitions for writs of habeas corpus.<sup>6</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>7</sup>

In an attempt to excuse his procedural defects, appellant argued that "Assembly Bill 471" gives the State the power to breach his plea agreement, which negates any benefit he received from plea negotiations. As "Assembly Bill 471" was not in place prior to the instant petition, appellant argued that the amendments the new bill makes to NRS 213.130 provide good cause sufficient to overcome the procedural bars.<sup>8</sup> Appellant further argued that the State withheld exculpatory evidence regarding his divorce proceedings, which he claimed should also provide good cause sufficient to overcome the procedural bars.

---

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

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

<sup>6</sup>See NRS 34.810(2).

<sup>7</sup>See NRS 34.726(1); NRS 34.810(3).

<sup>8</sup>See NRS 213.130 (discussing of parole and the hearing to be conducted by the Board of Parole Commissioners).

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that this petition was procedurally barred. Appellant failed to demonstrate that an impediment external to the defense excused his procedural defects.<sup>9</sup> It appears that appellant was referring to Senate Bill 471, which amended certain provisions of NRS 213.130 relating to parole; however, none of those amendments provided any additional appellate or post-conviction rights.<sup>10</sup> Therefore, appellant's claim that "Assembly Bill 471" allowed for his late filing was without merit.

In addition, even assuming the State had information concerning his divorce proceedings, appellant failed to demonstrate that the evidence he claimed the State withheld was material.<sup>11</sup> Further, appellant's grounds for relief regarding the State's withholding of exculpatory evidence and double jeopardy claims were reasonably available at the time of the filing of his previous post-conviction petitions for a writ of habeas corpus, and appellant has failed to demonstrate that he could not have raised his claims within this time period.<sup>12</sup> Finally, to the extent that appellant claimed a fundamental miscarriage of justice should excuse his procedural defects, he failed to demonstrate that he was

---

<sup>9</sup>See Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).

<sup>10</sup>S.B. 471, 74th Leg. (Nev. 2007).

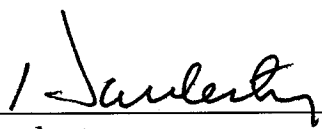
<sup>11</sup>Daniels v. State, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998) (stating that material evidence is evidence that has a reasonable probability of altering the outcome at trial if the defense had access to it).

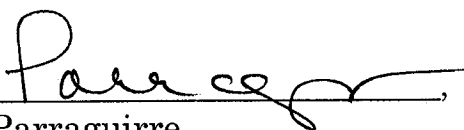
<sup>12</sup>See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003).

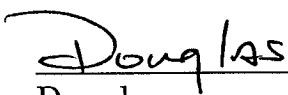
actually innocent.<sup>13</sup> Therefore, the district court did not err in dismissing the petition as procedurally barred.<sup>14</sup>

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>15</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>16</sup>

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

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

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

---

<sup>13</sup>Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

<sup>14</sup>The district court's order below contained a clerical error. In its order of dismissal, the district court erroneously ruled regarding a claim that English was appellant's second language and that appellant's youth should allow for a late filing. A review of appellant's petition reveals that appellant did not raise these claims.

<sup>15</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>16</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. Donald M. Mosley, District Judge  
Felton L. Matthews Jr.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk