

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN FLOWERS A/K/A CRAIG
JACOBSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50910

FILED

JUL 17 2008

TRACEY A. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF 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. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On May 1, 2003, the district court convicted appellant John Flowers, 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 after 20 years. No direct appeal was taken.

On March 29, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750, the district court declined to appoint counsel. The State opposed the petition on the grounds that the petition was untimely. On July 16, 2007, the district court, without conducting an evidentiary hearing, denied appellant's petition. No appeal was taken.

On August 1, 2007, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750, the district court declined to appoint counsel. The State opposed the petition on the grounds that the petition was

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untimely and successive. Appellant filed a response. On December 13, 2007, the district court, without conducting an evidentiary hearing, denied appellant's petition. This appeal followed.

In his petition, appellant claimed his trial attorney was ineffective due to a conflict of interest, his trial attorney coerced him into pleading guilty, and his trial attorney was ineffective for allowing him to plead guilty while incompetent. Appellant further claimed that a hormonal imbalance discovered while in prison demonstrates that he was incompetent at the time of his guilty plea. Appellant also intimated that he was being tortured.

Appellant filed this petition more than four years after entry of the judgment of conviction. Thus, this petition was untimely filed.¹ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.²

In an attempt to demonstrate cause for the delay, appellant argued that he could not previously present his claims because he was incompetent to pursue post-conviction relief due to his mental illness, use of psychotropic medication, brain damage, and a hormonal imbalance. Appellant further argued that his confinement did not allow proper access to the courts and to writing materials, that prison personnel made threats to stop him from filing an appeal, and that the prison intercepted his legal letters. In addition, appellant included a statement from Jay Hess, who appears to have been an inmate incarcerated with appellant, in which Hess stated that he witnessed abusive behavior from prison personnel

¹See NRS 34.726(1).

²See *id.*

towards appellant and that he believed that appellant's mail had been tampered with.³

Based on our review of the record on appeal, we conclude that the district court did not err in determining that this petition was procedurally time barred. Appellant failed to demonstrate that an impediment external to the defense excused his procedural defect.⁴ In his first untimely petition, appellant claimed that he had been incompetent subsequent to his conviction; thus he was unable to file a timely petition. The district court denied appellant's good cause argument, and appellant failed to appeal that denial. Any alleged prior incompetence is not good cause in the instant case because it does not explain the entirety of appellant's four year delay in filing his second petition and it does not demonstrate that a second petition was necessary to litigate the issue of incompetence. Appellant further failed to demonstrate that the prison interfered with the timely filing of his petition as he has been able to file two petitions during his incarceration.⁵ To the extent that appellant challenged the conditions of confinement, a post-conviction petition for a writ of habeas corpus is not the proper vehicle to raise such challenges.⁶

³NRS 208.165 states that an instrument signed by a prisoner "under penalty of perjury" will have the same legal effect as if acknowledged or sworn to its truth before a person authorized to administer oaths. However, we note that the statement signed by Jay Hess does not state that it was signed under penalty of perjury; therefore it is not in accordance with NRS 208.165.

⁴See Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).

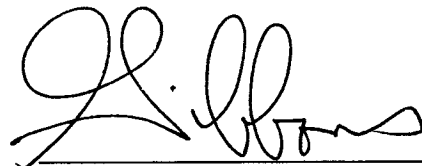
⁵See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003); see also Murray v. Carrier, 477 U.S. 478, 488 (1986).


⁶Bowen v. Warden, 100 Nev. 489, 686 P.2d 250 (1984).

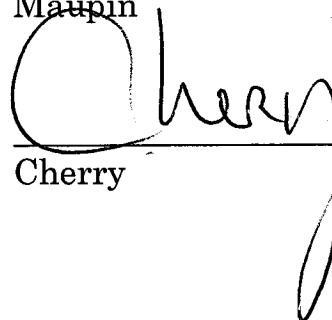
Finally, to the extent that appellant claimed a fundamental miscarriage of justice should excuse his procedural defects, he failed to demonstrate that he was actually innocent.⁷ Therefore, the district court did not err in denying the petition as procedurally time-barred.

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

ORDER the judgment of the district court AFFIRMED.⁹


_____, C.J.
Gibbons


_____, J.
Maupin


_____, J.
Cherry

⁷Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

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

⁹We 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. Michelle Leavitt, District Judge
John Flowers
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk