

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID MICHAEL STEINHAUER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51128

FILED

OCT 28 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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; Steven R. Kosach, Judge.

On July 31, 2002, the district court convicted appellant David Steinhauer, pursuant to a jury verdict, of first-degree kidnapping and sexual assault. The district court adjudicated appellant as a habitual felon pursuant to NRS 207.012 and sentenced him to serve a term of life in the Nevada State Prison without the possibility of parole. This court affirmed the judgment of conviction and sentence on direct appeal.¹ The remittitur issued on July 1, 2003.

On July 21, 2003, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. After appointing counsel, the

¹Steinhauer v. State, Docket No. 40024 (Order of Affirmance, June 5, 2003).

district court dismissed appellant's petition on October 13, 2006. On appeal, this court affirmed the district court's denial of appellant's petition, but remanded for a new sentencing hearing.²

On November 20, 2007, appellant filed a proper person document labeled "supplement to 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 for this supplement or to conduct an evidentiary hearing. On February 5, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant argued that his trial counsel and his appellate counsel were ineffective for failing to argue that a previous conviction for battery with the intent to commit sexual assault should not be used by the district court to adjudicate him a habitual criminal.

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.³ Moreover, appellant's petition constituted an abuse of the writ as his claims could have been raised in his previous post-

²Steinhauer v. State, Docket No. 48799 (Order of Affirmance and Remanding for New Sentencing Hearing, March 6, 2008). This court remanded the matter for a new sentencing hearing because the district court had failed to impose a sentence for both counts.

³See NRS 34.726(1).

conviction petition for a writ of habeas corpus.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

Appellant argued that his procedural defect should be excused because his appellate attorney did not raise claims regarding his previous conviction for battery with the intent to commit sexual assault on direct appeal or in his previous petition for a writ of habeas corpus, he had limited knowledge of the law, and the issues involved were complex. Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition as procedurally barred. Appellant failed to demonstrate that an impediment external to the defense excused his procedural defects.⁶ Appellant previously pursued a timely post-conviction petition for a writ of habeas corpus, and appellant failed to demonstrate that he could not have raised this claim in that petition.⁷ Further, limited knowledge of the law does not constitute good cause to excuse the filing of an untimely petition.⁸ Therefore, we conclude that the district court did not err in denying the petition.

⁴See NRS 34.810(2).

⁵See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

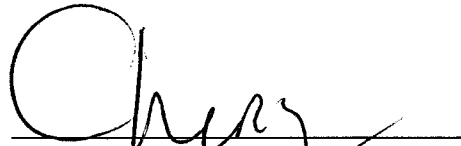
⁶See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).

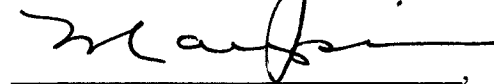
⁷See Hathaway, 119 Nev. at 252-253, 71 P.3d at 506.

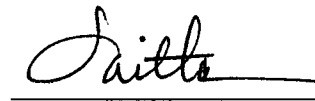
⁸See generally Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that petitioner's claim of organic brain damage, borderline mental retardation and reliance on assistance of
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Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, J.
Cherry


_____, J.
Maupin


_____, J.
Saitta

... continued

inmate law clerk unschooled in the law did not constitute good cause for the filing of a successive post- conviction petition).

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰We 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. Steven R. Kosach, District Judge
David Michael Steinhauer
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk