

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOWARD LEE WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51223

FILED

OCT 28 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 appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On December 30, 1997, the district court convicted appellant, pursuant to a jury verdict, of battery causing substantial bodily harm, burglary, and attempted robbery with the use of a deadly weapon. The district court adjudicated appellant a habitual criminal and sentenced him to serve a term of life without the possibility of parole in the Nevada State Prison. This court affirmed the judgment of conviction on direct appeal.¹ The remittitur issued on April 25, 2000.

¹White v. State, Docket No. 31749 (Order Dismissing Appeal, March 29, 2000).

On April 20, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel and conducted an evidentiary hearing on the petition. On May 23, 2002, the district court denied the petition. On appeal, this court affirmed the district court's denial of appellant's petition.²

On December 17, 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 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing, and on January 29, 2008, the district court dismissed appellant's petition as untimely. This appeal followed.

In his petition, appellant contended that: (1) the trial court exerted undue influence in persuading him to waive his right to counsel; (2) the prosecutor knowingly used false testimony and withheld exculpatory evidence; (3) his court appointed investigator withheld exculpatory evidence; (4) the trial court judge was biased against him; (5) his post-conviction counsel was ineffective; and (6) his sentence was void due to errors made by the sentencing court.

Appellant filed his petition more than seven years after this court issued the remittitur from his direct appeal. Thus, appellant's

²White v. State, Docket No. 39835 (Order of Affirmance, November 21, 2003).

petition was untimely filed.³ Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.⁴ Accordingly, his claims were procedurally barred absent a demonstration of good cause and prejudice.⁵

In an attempt to excuse his procedural defects, appellant argued that claims 1 thru 4 were not fully and fairly adjudicated on the merits during the prior proceedings because his post-conviction counsel did not follow his instructions and was otherwise ineffective. A defendant has no statutory or constitutional right to effective post-conviction counsel, "and hence, 'good cause' cannot be shown based on an ineffectiveness of post conviction counsel claim."⁶ Moreover, it follows that because appellant has no right to effective post-conviction counsel, the district court did not err in determining that appellant's fifth claim was procedurally barred and without good cause.⁷

Appellant's final claim constitutes an attempt by the appellant to overcome procedural bars by couching previously presented claims in

³See NRS 34.726(1).

⁴See NRS 34.810(1)(b)(2); NRS 34.810(2).

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

⁶Bejarano v. Warden, 112 Nev. 1466, 1469, 929 P.2d 922, 925 (1996) (quoting McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996)).

⁷See id.

jurisdictional terms. Appellant claimed that his sentence was void because the sentencing court lost jurisdiction over him when it permitted his pro bono counsel to withdraw and refused to appoint an attorney of his choice at the government's expense, and then proceeded to sentencing on an amended information filed without leave of the court and adjudicated him a habitual criminal based on factors other than his prior criminal record. Appellant's jurisdictional claim is patently without merit. Jurisdiction of a court depends upon its right to decide a case, and never upon the merits of its decisions.⁸ Jurisdiction is not dependent on the sufficiency of the pleadings,⁹ the regularity of the proceedings,¹⁰ or the correctness of a rendered decision.¹¹ This court has already addressed appellant's claims regarding the propriety of his waiver of the right to counsel and the district court's habitual criminal adjudication, and appellant failed to demonstrate good cause for raising these claims again.¹² Therefore, the district court did not err in dismissing the petition as procedurally barred and without good cause.

⁸Ex rel. Cameron v. District Court, 48 Nev. 198, 203, 228 P. 617, 618 (1924).

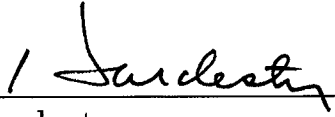
⁹Lemons v. Lemons, 373 N.E. 2d 544, 547 (Ill. App. Ct. 1978).

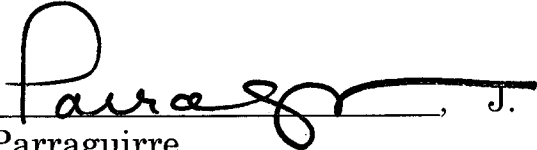
¹⁰Id.

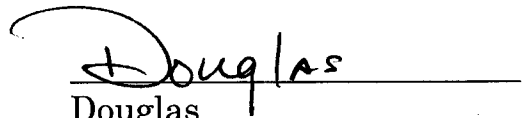
¹¹Avco Corp. v. Aero Lodge, 735, 390 U.S. 557, 561 (1968).

¹²See NRS 34.810(2).

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.¹³ Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

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

¹³See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).