

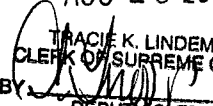
IN THE SUPREME COURT OF THE STATE OF NEVADA

LAVAR G. VARNADO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51375

**FILED**

AUG 29 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY:   
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; David B. Barker, Judge.

On November 24, 2003, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon and one count of attempted sexual assault. The district court sentenced appellant to serve multiple terms totaling 60 to 240 months in the Nevada State Prison. Appellant did not file a direct appeal.

On July 30, 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 appeal, this court affirmed the district court's denial of appellant's petition.<sup>1</sup>

On November 29, 2007, appellant filed a 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

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<sup>1</sup>Varnado v. State, Docket Number 44378 (Order of Affirmance, March 29, 2005).

district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On February 26, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed as follows: that the district court and the Nevada Supreme Court erred by denying his previous post-conviction petition for a writ of habeas corpus claim concerning his direct appeal deprivation claim; that his plea was coerced; that his attorney was ineffective for promising him a shorter sentence than he actually received; that he should have had an evidentiary hearing with his first petition concerning his claim that his plea was coerced; the information did not inform him of lifetime supervision; that his attorney was ineffective for failing to explain lifetime supervision to him; that the district court did not properly canvass appellant concerning lifetime supervision; that his attorney was ineffective for failing to ensure that the district court informed appellant of lifetime supervision; and that he suffered from judicial bias with his first post-conviction petition for a writ of habeas corpus because an evidentiary hearing was not conducted concerning his ineffective assistance of counsel claims.

Appellant filed his petition more than four years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.<sup>2</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>3</sup> Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a

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<sup>2</sup>See NRS 34.726(1).

<sup>3</sup>See id.

writ of habeas corpus.<sup>4</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 petition for writ of habeas corpus.<sup>5</sup> Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.<sup>6</sup>

Appellant argued that the procedural bars should not apply to this petition because he is being held in violation of the Constitution and a post-conviction writ for habeas corpus is the appropriate vehicle for his constitutional challenges. Further, appellant argued that his procedural defects should be excused because his previous post-conviction petition was denied without appointing counsel or conducting an evidentiary hearing, which violates due process and equal protection, was manifest injustice and caused him to suffer prejudice.

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's petition is subject to the procedural bars in NRS 34.726(1) and NRS 34.810(2). Appellant failed to demonstrate that an impediment external to the defense excused his procedural defects.<sup>7</sup> Further, appellant failed to demonstrate that the claims in his previous petition had merit and were wrongly decided.<sup>8</sup> Appellant failed

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

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

<sup>6</sup>See NRS 34.810(3).

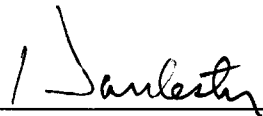
<sup>7</sup>See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).

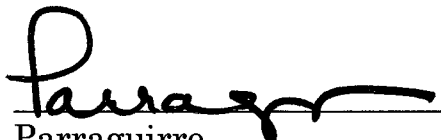
<sup>8</sup>Lozada, 110 Nev. at 353, 871 P.2d at 946.

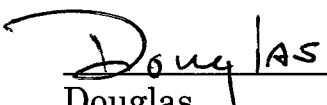
to demonstrate that the district court erred in his previous petition by not appointing counsel or conducting an evidentiary hearing. In addition, appellant's claims regarding the lifetime supervision provision were raised in his previous petition and, therefore, were successive.<sup>9</sup> Appellant claimed that he asked his trial counsel to file a notice of appeal following his guilty plea and that his trial counsel failed to do so, however, appellant failed to demonstrate that this claim was not available when he filed his previous petition.<sup>10</sup> Therefore, the district court did not err in denying appellant's petition as procedurally 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.<sup>11</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

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<sup>9</sup>See NRS 34.810(2).

<sup>10</sup>See Hathaway, 119 Nev. at 252-53, 71 P.3d at 506.

<sup>11</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. David B. Barker, District Judge  
Lavar G. Varnado  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk