

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN BENJAMIN ODOMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51415

FILED

APR 23 2009

TRACIE K. LINDEMAN
CLERK OF THE 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. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On June 14, 1982, the district court convicted appellant, pursuant to a jury verdict, of one count each of burglary and attempted murder with the use of a deadly weapon. The district court adjudicated appellant as a habitual criminal and sentenced him to serve three consecutive life terms in the Nevada State Prison without the possibility of parole. On direct appeal, this court affirmed appellant's conviction, vacated the life sentence imposed for the deadly weapon enhancement and affirmed appellant's two other consecutive life sentences. Odoms v. State, 102 Nev. 27, 714 P.2d 568 (1986). The remittitur issued on May 2, 1986. The district court entered an amended judgment of conviction on June 10, 1986.

Thereafter, appellant unsuccessfully sought relief by way of post-conviction petitions for a writ of habeas corpus. Odoms v. State, Docket No. 44754 (Order of Affirmance, June 16, 2005); Odoms v. State, Docket No. 43495 (Order of Affirmance, September 22, 2004); Odom v.

State, Docket No. 31533 (Order Dismissing Appeal, September 14, 2000); Odoms v. State, Docket No. 18650 (Order Dismissing Appeal, December 29, 1988). Appellant also unsuccessfully sought relief by filing motions to correct an illegal sentence. Odoms v. State, Docket No. 46049 (Order of Affirmance, December 21, 2005); Odom v. State, Docket No. 37617 (Order of Affirmance, January 2, 2002); and Odoms v. State, Docket No. 29443 (Order Dismissing Appeal, November 20, 1998).

On December 21, 2007, appellant filed a proper person “first amendment petition for a writ of habeas corpus” in the district court. The State opposed the petition arguing that appellant’s petition was time-barred and successive. Moreover, the State specifically pleaded laches. 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 March 26, 2008, the district court denied appellant’s petition. This appeal followed.

Appellant filed his petition approximately 21 years after this court issued the remittitur from his direct appeal. Thus, appellant’s petition was untimely filed.¹ See NRS 34.726(1). Moreover, appellant’s petition was successive because he had previously filed several post-conviction petitions for writs of habeas corpus. See NRS 34.810(2). Appellant’s petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(3). Further,

¹Further, appellant’s petition was filed almost 15 years after the effective date of NRS 34.726. 1991 Nev. Stat., ch. 44, § 5, at 75-76. (Effective January 1, 1993).

because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

In an attempt to excuse his procedural defects, appellant first argued that the district court erred in 1986 when it held an “evidentiary” hearing on appellant’s motion to withdraw his notice of appeal without allowing him to be present or be represented by counsel. In 1986, after the district court denied petitioner’s petition, appellant filed a notice of appeal. Six days after filing his notice of appeal, appellant filed a “motion to withdraw notice of appeal from order denying petition for post-conviction relief,” stating that he would “rather seek relief through the executive branch of the government instead of pursuing a seeming frivolous appeal.” The district court then held a short status hearing in the presence of the State before granting appellant’s request to withdraw. It appears that appellant argued that the district court’s holding of this hearing somehow deprived the court of personal and subject matter jurisdiction because the “record does not show that Odoms was competent to waive his right to appeal.” In addition, Odoms argued that challenges to personal and subject matter jurisdiction may be raised at any time and may be used to circumvent the procedural bars in this case, because the granting of his motion to withdraw created a procedural bar that he has never been able to overcome.²

²By granting the motion to withdraw, appellant’s appeal to this court was withdrawn, and therefore, any later petition would have to overcome the untimely and successive procedural bars found in NRS 34.726 and NRS 34.810.

This argument is without merit. The district court did not hold an evidentiary hearing on appellant's motion to withdraw. Instead, it appears that the district court held a status hearing, in the presence of State, to grant appellant's motion for leave to proceed in forma pauperis and motion to withdraw notice of appeal, and to deny his motion for appointment of counsel. No evidence was taken at this hearing, and therefore, appellant's presence was not required. Further, appellant failed to demonstrate how the lack of his presence at this hearing affected the district court's subject matter and personal jurisdiction over the appellant. Therefore, the district court did not err in finding that the appellant failed to overcome the procedural bars with this claim.

Second, appellant argued that his petition was a first amendment petition for a writ of habeas corpus which required the district court to render judgment within 30 days. See NRS 34.185. Appellant also argued that the district court erred in construing his petition as a post-conviction petition for a writ of habeas corpus. The district court, after receiving the petition, ordered the State to respond to the petitioner's post-conviction petition for a writ of habeas corpus. Appellant then filed a "motion to recind (sic) order / re-issue new order" and argued that the district court mistakenly construed his petition as a petition for a writ of habeas corpus and should therefore rescind the order to respond. The district court declined to do so and denied the petition as untimely and barred by laches.

Appellant mistakenly relies on NRS 34.185 as a way to overcome the procedural bars in this case. NRS 34.185 allows a defendant to file an application alleging unconstitutional prior restraint pursuant to the First Amendment of the Constitution of the United States or Section 9

of Article 1 of the Constitution of the State of Nevada. Appellant has not alleged a prior restraint. Accordingly, NRS 34.185 does not apply to appellant and the district court did not err in construing his "First Amendment" petition as a post-conviction petition for a writ of habeas corpus. Further, appellant challenged the validity of the judgment of conviction and sentence and a petition for a writ of habeas corpus is the exclusive remedy. NRS 34.724(2)(b). Therefore, we affirm the order of the district court denying the petition.

Moreover, appellant failed to overcome the presumption of prejudice to the State, and therefore, his claim is barred by laches. In addition, appellant's claim that the district court unconstitutionally imposed NRS 207.010 in his case was considered and rejected by this court on direct appeal and in several of his post-conviction petitions and motions to correct an illegal sentence. "Under the law of the case doctrine, issues previously determined by this court on appeal may not be reargued as a basis for habeas relief." Pellegrini v. State, 117 Nev. 860, 888, 34 P.3d 519, 538 (2001).

Finally, as set forth earlier, appellant has filed a number of post-conviction challenges. Appellant is cautioned that an inmate may have statutory good time credit forfeited if the inmate, in a civil action, submits a pleading or other document to the court that:

- (1) Contains a claim or defense that is included for an improper purpose, including, without limitation, for the purpose of harassing his opponent, causing unnecessary delay in the litigation or increasing the cost of litigation;
- (2) Contains a claim, defense or other argument which is not warranted by existing law or by a reasonable argument for a change in existing


law or a change in the interpretation of existing law; or

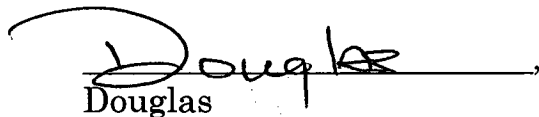
- (3) Contains allegations or information presented as fact for which evidentiary support is not available or is not likely to be discovered after further investigation.

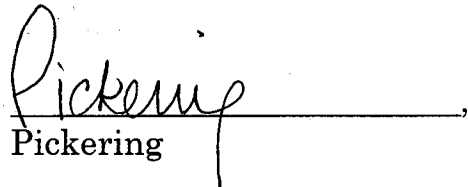
See NRS 209.451(1)(d). A post-conviction petition for a writ of habeas corpus is a civil action for the purposes of NRS 209.451. See NRS 209.451(5).

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

ORDER the judgment of the district court AFFIRMED.³

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

³We 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: Eighth Judicial District Court Dept. 8, District Judge
John Benjamin Odoms
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk