

IN THE SUPREME COURT OF THE STATE OF NEVADA

CECIL L. WILLIAMS, A/K/A KENNETH
LEE ADAMS,

No. 34663

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUN 13 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying appellant's motion to set aside judgment.

On February 12, 1987, the district court convicted appellant, pursuant to a jury trial, of one count of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction. Adams v. State, Docket No. 18167 (Order Dismissing Appeal, April 5, 1989).

On December 15, 1987, appellant filed a petition for post-conviction relief in the district court. The district court appointed counsel, and counsel filed a supplemental petition. The State opposed the petition. On June 16, 1988, after conducting an evidentiary hearing, the district court denied the petition. This court dismissed appellant's appeal. Adams v. State, Docket No. 18167 (Order Dismissing Appeal, April 5, 1989).

On July 2, 1999, appellant filed a motion to set aside judgment in the district court pursuant to NRCP 60(b)(2). The district court denied appellant's motion. This appeal followed.

In his motion, appellant argued that the district court's decision to deny his petition for post-conviction relief in 1988 was based upon "EXTRINSIC FRAUD, AND PURJURY [sic] BY SWORN AFFIDAVITS SUBMITTED BY TRIAL COUNSEL AND DEPUTY DISTRICT ATTORNEY." Appellant claimed that his trial counsel and the district attorney lied when they represented that they had tried

to find Sergeant Porter and that they could not locate him. In support of his claim, appellant attached a copy of a letter sent to him by the Department of the Air Force in 1996. This letter provided Sergeant Porter's assignment locations on September 25, 1982, and during the period of October 1, 1986 to January 23, 1987. This letter also stated that the Air Force Worldwide Locator records did not reveal any other inquiries had been made regarding Sergeant Porter. Thus, appellant believed that his trial counsel and the district attorney lied when they represented that they had attempted to locate Sergeant Porter prior to trial. Appellant requested that the order denying his petition be set aside.

Even assuming, without deciding, that appellant may challenge the validity of a post-conviction proceeding in a motion to set aside a judgment pursuant to NRCF 60(b)(2), we conclude that the district court did not err in denying appellant's motion.¹ The record demonstrates that appellant's motion was without merit. The record on appeal contains a letter to the district attorney's office demonstrating that appellant's reliance upon the letter he received was misplaced because his letter did not contain a complete explanation about the maintenance of records. The letter to the district attorney's office stated:

This is in reference to your letter of 19 August 1996 to Lt. Colonel Posey concerning procedures by the Air Force Worldwide Locator in maintaining records.

Freedom of Information Act released requests are maintained for 2 years and if denied for 6 years. Locator requests requiring a fee are maintained for 2 years. If no fees are involved, no record would be maintained. The Air Force Worldwide Locator cannot

¹Pursuant to NRS 34.724(2)(b) a post-conviction petition for a writ of habeas corpus "[c]omprehends and takes the place of all other common law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them." A petitioner that challenges the validity of his conviction or sentence may not circumvent the procedural requirements of NRS Chapter 34 by filing a motion to set aside a judgment pursuant to NRCF 60(b)(2). See NRS 34.780(1) ("The Nevada Rules of Civil Procedure, to the extent that they are not inconsistent with NRS 34.360 to 34.830, inclusive, apply to proceedings pursuant to NRS 34.720 to 34.830, inclusive").

verify whether or not inquiries were made during the period 1 October 1986 to 23 January 1987.

(Emphasis added.) Thus, appellant failed to demonstrate that his trial counsel and the district attorney committed perjury or a fraud upon the district court when they represented that they had attempted to locate Sergeant Porter.

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), cert. denied, 423 U.S. 1077 (1976).

Accordingly, we

ORDER this appeal dismissed.²

Maupin, J.
Maupin

Shearing, J.
Shearing

Becker, J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Cecil L. Williams
Clark County Clerk

²We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.