

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARNOLD KEITH ANDERSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51819

**FILED**

NOV 24 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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

We have reviewed the record on appeal, and we conclude that the district court did not err in dismissing appellant's petition for the reasons stated in the attached order. Appellant's claim regarding the sentence structure was barred by the doctrine of the law of the case.<sup>1</sup>

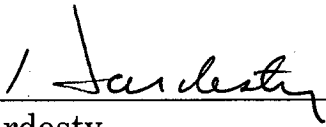
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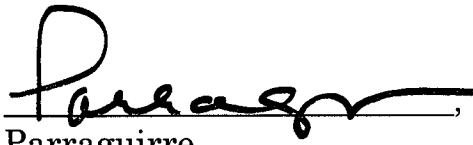
<sup>1</sup>See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

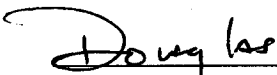
Therefore, briefing and oral argument are not warranted in this case.<sup>2</sup>

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Douglas W. Herndon, District Judge  
Arnold Keith Anderson  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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

ORIGINAL

1 ORDR  
2 CATHERINE CORTEZ MASTO  
3 Attorney General  
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*C. Resch*  
CLERK OF COURT

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 \* \* \*

11 ARNOLD ANDERSON,  
12 Petitioner,

13 vs.

14 THE STATE OF NEVADA,

15 Respondent.

CASE NO.: C199059  
DEPT. NO.: III

Date of Hearing: May 22, 2008  
Time of Hearing: 9:00 a.m.

17  
18 ORDER DENYING PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND ORDER  
19 GRANTING MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS  
(POST-CONVICTION)

20 THIS CAUSE having come on for hearing before the Honorable DOUGLAS W.  
21 HERNDON, District Court Judge, on the 22<sup>nd</sup> day of May, 2008, the Petitioner not being  
22 present, and Respondents having been represented by CATHERINE CORTEZ MASTO,  
23 Attorney General, by and through Jamie J. Resch, Deputy Attorney General, and the Court  
24 having considered the matter, including briefs, transcripts, arguments of counsel, and all  
25 pleadings and documents on file herein, now, therefore, the Court makes the following  
26 findings of fact and conclusions of law:

27 ///

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555 E. Washington, Suite 3900  
Las Vegas, NV 89101

FINDINGS OF FACT

1  
2 1. Anderson is currently an inmate at High Desert State Prison. On March 3, 2005,  
3 the district court convicted Petitioner, pursuant to a jury verdict, of six counts of burglary  
4 (Counts 1, 5, 9, 13, 17, and 20), six counts of forgery (Counts 2, 6, 10, 14, 18 and 21) and four  
5 counts of theft (Counts 3, 7, 11 and 15), and six counts of obtaining and using personal  
6 identification information of another (Counts 4, 8, 12, 16, 19 and 22). This district court  
7 sentenced Petitioner to serve terms in the Nevada State Prison of 16 to 72 months for each  
8 burglary count, 12 to 34 months for each forgery count, 12 to 36 months for each theft count,  
9 and 32 to 144 months for each count of obtaining and using the personal identification  
10 information of another.<sup>1</sup> Further, the district court imposed the terms for Counts 1 through 4 to  
11 run consecutive to each other, and the terms for Counts 5 through 22 to run concurrent to  
12 each other and Counts 1 through 4.

13 2. Anderson has repeatedly challenged the manner in which the Department of  
14 Corrections has computed his sentence structure. These challenges include: (1) A Motion For  
15 (sic) Seeking Concurrent Sentences denied by the court on June 27, 2006, (2) A Motion to  
16 Amend Judgment of Conviction denied by the court on August 29, 2006, (3) A Motion to Have  
17 Prison Correct Judgment of Conviction denied on October 12, 2006, (4) A Motion to Compel  
18 Prison to Adjust Time denied on January 4, 2007, (5) A Petition for Writ of Habeas Corpus  
19 denied on February 6, 2007, (6) A Proper Person Motion to Clarify Sentence denied on March  
20 27, 2007, (7) A Petition for Writ of Habeas Corpus denied September 13, 2007, (8) A Proper  
21 Person Motion to Compel Prison to Fix Judgment of Conviction denied October 16, 2007, (9)  
22 A Proper Person Motion to Clarify Mistake denied on November 27, 2007, (10) A Motion to  
23 Clarify denied February 26, 2008, and (11) the most recent petition for writ of habeas corpus.

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28 <sup>1</sup> An amended judgment of conviction was entered on May 16, 2005, to fix a clerical error in the judgment of conviction.

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1 3. Anderson filed his most recent petition on March 24, 2008. However, while that  
2 matter was pending before this Court, Anderson appealed the denial of his Motion to Compel  
3 Prison to Fix Judgment of Conviction to the Nevada Supreme Court. The denial of that motion  
4 was affirmed in a written Order of Affirmance filed April 10, 2008. Therein, the Nevada  
5 Supreme Court expressly determined "Appellant [Anderson] failed to demonstrate that the  
6 Department of Corrections incorrectly calculated his sentence structure in the instant case."

7 4. The Court finds Anderson has repeatedly raised this issue with the Court,  
8 including via several prior Petitions for Writ of Habeas Corpus. Anderson's sentence structure  
9 is correct and his claims are not properly before this Court. As such, his Motion for Summary  
10 Judgment must be denied, and the State's Motion to Dismiss Petition for Writ of Habeas  
11 Corpus must be granted.

12 5. The Court finds Anderson's petition is without merit and that an evidentiary  
13 hearing is not required.

#### 14 CONCLUSIONS OF LAW

15 1. NRS 34.810 states that the court shall dismiss a petition if it determines that the  
16 grounds therein could have been presented to the trial court or raised on direct appeal or any  
17 other prior post-conviction proceeding. See NRS 34.810(1)(b). Additionally, a second or  
18 successive petition must be dismissed if it either alleges grounds which were already decided  
19 on the merits, or, alleges new grounds and the court finds that the failure to assert the  
20 grounds in a prior petition constitutes an abuse of the writ. NRS 34.810(3).

21 2. Moreover, decisions of the Nevada Supreme Court are binding on the lower  
22 courts as the "law of the case," and may not be attacked in a habeas proceeding. Pellegrini v.  
23 State, 117 Nev. 860, 889, 34 P.3d 519 (2001).

24 3. Anderson's petition must be dismissed. In the first instance, he has already  
25 raised issues attacking the interpretation of his sentence structure on several occasions with  
26 the trial court, including a prior petition for writ of habeas corpus. The pending petition is an  
27 abuse of the writ because it raises the same issues presented to and rejected by this Court in  
28 a previous petition, or which could have been raised in one of Anderson's several prior

1 petitions.

2 4. Additionally, the petition must be dismissed under Pellegrini. The Nevada  
3 Supreme Court has already considered and rejected the claims raised by Anderson in his  
4 petition and this Court cannot overturn that decision.

5 5. Finally, NRS 209.451, states that a prisoner risks forfeiture of accumulated time  
6 credits by filing civil claims (including a petition for writ of habeas corpus) which are filed "for  
7 the purpose of harassing his opponent, causing unnecessary delay in the litigation or  
8 increasing the cost of the litigation." The Court will consider a request by Respondents under  
9 NRS 209.451 if Anderson persists in further raising this issue before the District Court.

10 6. NRS 34.770 provides that if the reviewing court determines that a petitioner is  
11 not entitled to relief and an evidentiary hearing is not required, the court shall dismiss the  
12 petition without a hearing. An evidentiary hearing is not necessary in the instant case as all of  
13 Anderson's claims are subject to dismissal as an abuse of the writ, and are barred by the  
14 doctrine of law of the case. As such, Anderson's petition for post conviction relief should be  
15 denied.

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ORDER

Based on the Findings of Fact and Conclusions of Law contained herein:

IT IS HEREBY ORDERED that Anderson's Motion for Summary Judgment is hereby DENIED, and;

IT IS FURTHER ORDERED that the State's Motion to Dismiss is GRANTED, and the Petition for Writ of Habeas Corpus (Post-Conviction) is hereby DISMISSED.

DATED this 29<sup>th</sup> day of May, 2008.

  
HONORABLE DISTRICT COURT JUDGE

Submitted By:

CATHERINE CORTEZ MASTO  
Attorney General

By: 

JAMIE J. RESCH  
Deputy Attorney General  
Special Prosecutions Unit

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