

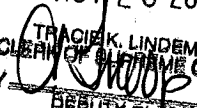
IN THE SUPREME COURT OF THE STATE OF NEVADA

GENE ANTHONY ALLEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51940

FILED

NOV 20 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; James M. Bixler, Judge.

On April 7, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count each of sexual assault of a minor under the age of sixteen and lewdness with a minor under the age of fourteen. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years for the lewdness conviction, and a concurrent term of five to twenty years for the sexual assault conviction. This court affirmed appellant's judgment of conviction and sentence on direct appeal.¹ The remittitur issued on April 6, 2004.

¹Allen v. State, Docket No. 41274 (Order of Affirmance, March 11, 2004).

On June 11, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant filed supplemental proper person post-conviction petitions for writs of habeas corpus on July 8, 2003, and December 26, 2003. The State filed an opposition. On February 23, 2004, the district court denied appellant's petitions. On appeal, this court affirmed the order of the district court.²

On February 24, 2004, appellant filed a proper person motion to vacate the judgment of conviction.³ On March 11, 2004, appellant filed a proper person amended post-conviction petition for a writ of habeas corpus. Appellant additionally filed two motions to suppress. The State opposed appellant's petitions and motions. On June 25, 2004, the district court denied appellant's petitions and motions. On appeal, this court affirmed the order of the district court denying appellant's post-conviction petitions for writs of habeas corpus, but dismissed appellant's untimely appeal from the denial of his motions.⁴

²Allen v. State, Docket No. 42969 (Order of Affirmance, September 17, 2004).

³Because this motion appeared to challenge the judgment of conviction, it was construed as a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(b).

⁴Allen v. State, Docket No. 43599 (Order of Affirmance and Dismissing Appeal in Part, December 6, 2004).

On August 10, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus. On August 17, 2004, and August 23, 2004, appellant filed additional post-conviction petitions for writs of habeas corpus. The State filed an opposition. On October 11, 2004, the district court denied appellant's petitions. On appeal, this court affirmed the order of the district court.⁵

On November 19, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus. On January 24, 2005, and again on March 11, 2005, appellant filed a "motion for sentencing transcripts." On March 3, 2005, appellant filed a document titled "motion for downward departure." The State opposed appellant's petition and motions. On March 2, 2005, the district court dismissed appellant's petition for a writ of habeas corpus. On March 29, 2005, the district court denied appellant's "motion for sentencing transcripts" and "motion for downward departure." This court affirmed the order of the district court denying appellant's petition and dismissed the appeal from the denial of the motions.⁶

On August 19, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

⁵Allen v. State, Docket No. 44180 (Order of Affirmance, March 4, 2005).

⁶Allen v. State, Docket No. 44991 (Order of Affirmance and Dismissing Appeal in Part, June 14, 2005).

State opposed the petition. On December 6, 2005, the district court denied the petition. No appeal was taken from the December 6, 2005 order.

On December 22, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On January 24, 2006, the district court denied the motion. This court affirmed the order of the district court on appeal.⁷

On April 24, 2006, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On May 24, 2006, appellant filed a proper person document requesting another district court judge, and the State opposed appellant's request. On August 1, 2006, the district court dismissed appellant's petition and request for a different district court judge. This court affirmed the order of the district court on appeal.⁸

On February 5, 2007, appellant filed his post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On April 3, 2007, the district court entered an order dismissing the petition. This court affirmed the order of the district court on appeal.⁹

⁷Allen v. State, Docket No. 46666 (Order of Affirmance, July 25, 2006).

⁸Allen v. State, Docket No. 47501 (Order of Affirmance, January 10, 2007).

⁹Allen v. State, Docket Nos. 49167 and 49162 (Order of Affirmance in Docket No. 49167 and Order Dismissing Appeal in Docket No. 49126, September 12, 2007).

In addition to the actions set forth above, appellant filed numerous proper person motions and documents in the district court and in this court.

On March 17, 2008, appellant filed what is arguably his thirteenth post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed two supplemental petitions, one on April 10, 2008, and another on May 5, 2008, entitled "Answer and Response to Writ of Habeas Corpus." On July 30, 2007, the district court dismissed appellant's petition. This appeal followed.

Appellant's petition was unintelligible. It appears that appellant claimed that the State withheld exculpatory evidence, that the victim should have had a psychological evaluation, that his due process rights were violated, and that his right to confrontation was violated.

The petition was filed almost four years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.¹⁰ Moreover, appellant's petition was successive because it appeared that he raised claims that had previously been litigated and an abuse of the writ because it appeared that he raised claims that he had

¹⁰See NRS 34.726(1).

not previously litigated.¹¹ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.¹²

In an attempt to excuse his procedural defects, appellant appeared to argue that his petition should be considered on the merits because the State is withholding his federal mail and the claims he now raises could not have been discovered previously.¹³ Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition as procedurally defective. Appellant failed to demonstrate that an impediment external to the defense excused his procedural defects.¹⁴ Appellant failed to demonstrate that the claims raised in this petition were not reasonably available within the one-year deadline to file a timely petition.¹⁵ Appellant further failed to demonstrate how lack of access to his federal mail prevented him from filing all of his claims in his first timely petition that was considered on the merits.

¹¹See NRS 34.810(2).

¹²See NRS 34.726(1); NRS 34.810(3).


¹³To the extent that appellant challenged the conditions of his confinement, a post-conviction petition for a writ of habeas corpus is not the proper vehicle to raise such challenges. See Bowen v. Warden, 100 Nev. 489, 686 P.2d 250 (1984).

¹⁴See Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).


¹⁵See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003).

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.¹⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁷


_____, C.J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. James M. Bixler, District Judge
Gene Anthony Allen
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁷We 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.