

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERNEST D. DUNBAR,

No. 34693

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUN 13 2001

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

On November 19, 1990, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault on a minor under fourteen years of age and one count of sexual assault. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. Appellant did not file a direct appeal.

On April 2, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that the petition was procedurally barred because it was untimely filed. Moreover, the State specifically pleaded laches. Appellant filed a response. 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 July 14, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately eight years after entry of the judgment of conviction. Thus,

01-09868

appellant's petition was untimely filed.¹ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.² Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.³

In an attempt to excuse his procedural defects, appellant argued that his due process rights had been violated. Appellant asserted that he was denied the records of the proceedings. Appellant asserted that this denial prejudiced him in going further in challenging the prior proceedings. Appellant further argued that he was left in the dark as to how to proceed. Appellant wished to challenge the effective assistance of his counsel, the validity of the guilty plea, and the fact that there was no written guilty plea agreement in this case.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Appellant's 1991 motion for the production of transcripts was denied by the district court because he failed to carry his burden of demonstrating his need for the transcripts.⁴ Appellant failed to demonstrate adequate cause to excuse his procedural defects or overcome the presumption of prejudice to the State.⁵ Therefore, we affirm the order of the district court.

¹See NRS 34.726(1).

²See id.

³See NRS 34.800(2).

⁴See Peterson v. Warden, 87 Nev. 134, 483 P.2d 204 (1971).

⁵See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988); see generally Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young, J.
Young

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Ernest D. Dunbar
Clark County Clerk

⁶See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).