

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN RAY MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52198

FILED

FEB 04 2009

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 denying a post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James Todd Russell, Judge.

On June 16, 1998, appellant was convicted of six counts of burglary in the Second Judicial District Court in district court case number CR98-1096. The district court imposed six concurrent terms of 38 to 96 months in the Nevada State Prison and provided appellant with 82 days of credit for time served. On that same date, appellant was convicted of two counts of burglary in the Second Judicial District Court in district court case number CR98-1081. The district court imposed two consecutive terms of 38 to 96 months and ordered these sentences to run consecutive to the sentences imposed in CR98-1096. On that same date, appellant was convicted of two counts of burglary in the Second Judicial District Court in district court case number CR98-1034. The district court imposed two concurrent terms of 38 to 96 months and ordered the terms to run concurrently with the sentences imposed in the other cases.

On August 30, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the First Judicial District Court challenging the computation of time served. The district court denied the petition because the petition was not in the proper form. On appeal, this court reversed and remanded for the district court to consider the petition on the merits. Miller v. Sgt. Lewis, Docket No. 48167 (Order of Reversal and Remand, June 22, 2007). The State then filed an opposition in the district court, and appellant filed a reply. On September 12, 2007, the district court denied the petition. This court affirmed the order of the district court on appeal. Miller v. Sgt. Lewis, Docket No. 50231 (Order of Affirmance, February 29, 2008).

On February 12, 2008, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the First Judicial District Court challenging the computation of time served. On February 27, 2008, the district court denied the petition in part and dismissed the petition in part. This court affirmed the order of the district court on appeal. Miller v. State, Docket No. 51242 (Order of Affirmance, October 15, 2008).

On March 20, 2008, appellant filed a third proper person post-conviction petition for a writ of habeas corpus in the First Judicial District Court challenging the computation of time served. The State opposed the petition. On July 16, 2008, the district court denied the petition. This appeal followed.

In his petition, appellant challenged the computation of time served. Appellant requested the district court to conduct an independent audit of his credits for time served. Appellant claimed that he should

receive the following credits: (1) a deduction of 20 days from the sentence for each month served; (2) a deduction of 10 days from the sentence for each month for labor and study; (3) a deduction of 90 days for a high school diploma; (4) a deduction of 120 days for an Associate's Degree; (5) a deduction of 90 days for a second Associate's Degree; (6) a deduction of 90 days for each of his seven years of incarceration for exceptional meritorious service in tutoring other inmates; (7) a deduction of 60 days for completion of a drug and alcohol course; (8) statutory good time credits for the time served in the county detention facility prior to sentencing; and (9) credits for a business certificate and two computer certificates. Appellant further claimed that his credits were being improperly reduced by the Department of Corrections (the Department). Appellant supported his petition with a document purportedly used by the Department labeled, "NDOC's Merit Credit System." The document contained a statement indicating that one credit was not equal to one 24-hour day. Thus, despite the fact that NRS 209.4465, prior to July 1, 2007, provided for 10 days of credit per month for statutory good time, 10 days of credit per month for work time, and various other credits for educational and meritorious endeavors, the Department used a mathematical formula of 1.667 to reduce 10 credits to "6 days off."¹

The district court denied the petition on the ground that the petition was procedurally defective in violation of NRS 34.810(2). Based

¹Appellant primarily relied upon the version of NRS 209.4465 in effect prior to July 1, 2007. See 2003 Nev. Stat., ch. 426, § 8, at 2577-78.

upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant's petition was procedurally barred and appellant failed to demonstrate good cause.

NRS 34.810(2) provides:

A second or successive petition must be dismissed if the judge . . . determines that it fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, the judge . . . finds that the failure . . . to assert those grounds in a prior petition constituted an abuse of the writ.

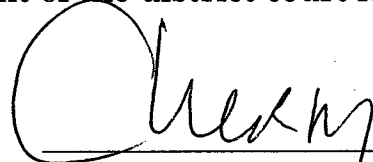
NRS 34.810(3) further provides that it is the petitioner's burden of pleading and providing specific facts demonstrating good cause for presenting the claims again or failing to present the claims in a prior petition and actual prejudice to the petitioner.

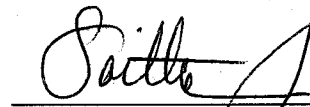
With the exception of appellant's claims relating to the business and computer certificates, all of appellant's claims were previously raised in the February 2008 petition and denied on the merits. Appellant failed to demonstrate good cause for raising these claims again as he failed to demonstrate that an impediment external to the defense excused his procedural defects. See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994). Appellant further failed to demonstrate good cause for his failure to raise claims relating to the business and computer certificates in his prior petitions as claims regarding these certificates were reasonably available when he filed his two prior petitions; notably, the certificates were earned in and prior to 2004. See generally Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003). Therefore, we affirm the order


of the district court denying the petition as procedurally barred and without good cause.

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.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. James Todd Russell, District Judge
John Ray Miller
Attorney General Catherine Cortez Masto/Carson City
Carson City Clerk