

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES EARL MORGAN,

No. 34716

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUN 26 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rishard*
CHIEF 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 June 13, 1990, the district court convicted appellant, pursuant to a guilty plea, of three counts of robbery with the use of a deadly weapon and one count of burglary. The district court sentenced appellant to serve terms totalling thirty-two years. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹ The remittitur issued on December 9, 1998.

On April 9, 1991, appellant filed a proper person petition for post-conviction relief pursuant to former NRS 177.315 in the district court. The State opposed the petition. The district court denied appellant's petition. This court dismissed appellant's appeal on August 27, 1991.²

On February 12, 1992, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent

¹Morgan v. State, Docket No. 33029 (Order Dismissing Appeal, November 20, 1998).

²Morgan v. State, Docket No. 22405 (Order Dismissing Appeal, August 27, 1991).

appellant or to conduct an evidentiary hearing. The district court denied appellant's petition. This court dismissed appellant's appeal on November 3, 1993.³

On March 30, 1994, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. The district court denied appellant's petition. This court dismissed appellant's appeal on July 28, 1995.⁴

On September 13, 1995, appellant filed a proper person motion to correct an illegal sentence in the district court. The district court denied appellant's motion. This court dismissed appellant's appeal on May 12, 1998.⁵

On May 3, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 August 4, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately nine years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.⁶ Moreover,

³Morgan v. State, Docket No. 24069 (Order Dismissing Appeal, November 3, 1993).

⁴Morgan v. State, Docket No. 26087 (Order Dismissing Appeal, July 28, 1995).

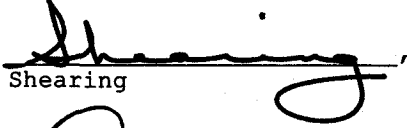
⁵Morgan v. State, Docket No. 27777 (Order Dismissing Appeal, May 12, 1998).

⁶See NRS 34.726(1); see also Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 132, 1133-34 (1998) (holding that the one-year period for filing a timely petition "begins to run from the issuance of the remittitur from a timely direct appeal to this court from the judgment of conviction or from the entry of the judgment of conviction if no direct appeal is taken").

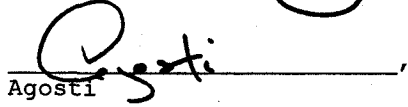
appellant's petition was successive because he had previously filed a petition for post-conviction relief pursuant to former NRS 177.315 and three post-conviction petitions for writs of habeas corpus.⁷ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁸ Appellant did not attempt to excuse his procedural defects. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition.

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.⁹ Accordingly, we

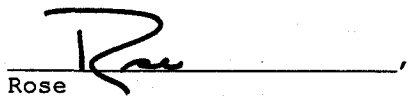
ORDER the judgment of the district court AFFIRMED.



Shearing J.



Agosti J.



Rose J.

cc: Hon. Ronald D. Parraguirre, District Judge
Attorney General
Clark County District Attorney
James Earl Morgan
Clark County Clerk

⁷See NRS 34.810(2).

⁸See NRS 34.726(1); NRS 34.810(3).

⁹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).