

IN THE SUPREME COURT OF THE STATE OF NEVADA

ZEL NORMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52297

FILED

APR 23 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

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; Jackie Glass, Judge.

On June 2, 2006, the district court convicted appellant, pursuant to a jury verdict, of two counts of possession of a controlled substance and one count of stop required on signal of a police officer. The district court sentenced appellant to serve three consecutive terms of 60 to 240 months in the Nevada State Prison. This court affirmed appellant's judgment of conviction and sentence on appeal. Norman v. State, Docket No. 47548 (Order of Affirmance, February 20, 2007). The remittitur issued on March 20, 2007.

On March 5, 2008, 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. On May 15, 2008, the district court denied appellant's petition. Appellant did not appeal this decision.

On May 2, 2008, appellant filed an amended proper person post-conviction petition for a writ of habeas corpus in the district court.

The State opposed the petition. On August 4, 2008, appellant filed a response to the State's opposition. 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 treated the amended petition as a second and successive petition. On August 27, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant alleged (1) police misconduct; (2) prosecutorial misconduct; (3) abuse of discretion by the district court; and (4) ineffective assistance of counsel.

Appellant filed his petition more than one year after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction for a writ of habeas corpus. See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(3). Based upon our review of the record on appeal, we conclude that appellant failed to overcome the procedural bars.

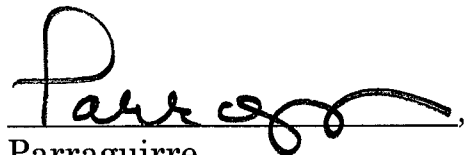
First, appellant claimed that the district court erred by construing his amended petition as a second and successive petition. Appellant claimed that in his first petition he "reserved the right to amend" his petition. However, NRS 34.750(5) states that "no further pleadings may be filed except as ordered by the court." The district court did not give appellant permission to amend the petition, and therefore, did not err in treating appellant's amended petition as a second petition.

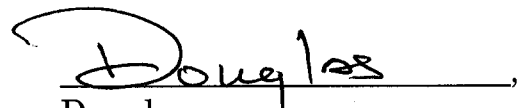
Second, appellant claimed that he had good cause to excuse his procedural defects because his trial counsel failed to release his case file. This court has held that trial counsel's failure to send a petitioner his

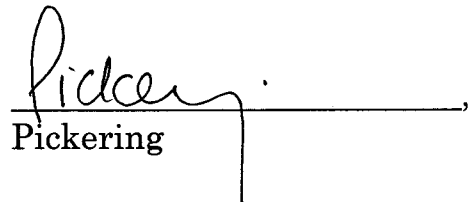
files did not prevent the petitioner from filing a timely petition. See Hood v. State, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995). In fact, appellant did file a previous, timely petition. Accordingly, appellant failed to demonstrate that he was prevented from filing a timely petition absent the case file. Therefore, we conclude that the district court did not err in denying appellant's petition as procedurally barred.

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.¹


Parraguirre J.


Douglas J.


Pickering J.

¹We 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.

cc: Hon. Jackie Glass, District Judge
Zel Norman
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk