

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM O. GIBBONS,

No. 34785

Appellant,

vs.

WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,

Respondent.

FILED

JAN 30 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On June 22, 1979, the district court convicted appellant, pursuant to a jury trial, of one count of first degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison without the possibility of parole. This court affirmed appellant's conviction. *Gibbons v. State*, 97 Nev. 520, 634 P.2d 1214 (1981).

On August 3, 1982, appellant filed a petition for post-conviction relief in the district court. On June 27, 1983, after conducting an evidentiary hearing, the district court denied the petition. This court dismissed the appeal. *Gibbons v. State*, Docket No. 15057 (Order Dismissing Appeal, May 10, 1984).

On April 29, 1996, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent appellant, and counsel filed an amended habeas corpus petition. The State opposed the petition, arguing that it was procedurally barred because it was untimely and successive. See NRS 34.726(1); NRS 34.810(2). Further, the State specifically pleaded laches. See NRS 34.800(2). Appellant did not file a reply. On January 24, 1997, the district court denied appellant's petition as procedurally barred pursuant to NRS 34.726(1); NRS 34.810(2); NRS 34.800(2). This court dismissed

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appellant's appeal. Gibbons v. State, Docket No. 30087 (Order Dismissing Appeal, June 9, 1999).

On May 26, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On June 5, 1998, the district court ordered the State to respond within forty-five days. On July 15, 1998, August 18, 1998, and September 25, 1998, the district court granted the State's requests for extensions of time to file a response. On September 21, 1998, appellant filed a supplement to his petition. On June 4, 1999, appellant filed a request for entry of default on the ground that the State had not yet filed a response to his petition. On July 22, 1999, the State filed a motion to dismiss the petition pursuant to NRS 34.810(2), arguing that appellant's petition was procedurally barred because it was successive. Further, the State specifically pleaded laches pursuant to NRS 34.800(2). On July 29, 1999, appellant filed a motion to strike the State's motion to dismiss due to the State's failure to timely respond to his petition. On August 2, 1999, the State filed a response to appellant's motion to strike, arguing that the motion to strike should be denied because of the procedural infirmities inherent in appellant's petition and because no willful or fraudulent delay existed. 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 26, 1999, the district court denied appellant's motion to strike the State's motion to dismiss and dismissed appellant's petition. On September 2, 1999, the district court corrected clerical errors contained in the order and entered an amended order dismissing appellant's petition. This appeal followed.

Appellant filed his petition almost nineteen years 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 two post-conviction petitions. See 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). Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

Appellant did not attempt to excuse his procedural defects or overcome the presumption of prejudice to the State. Therefore, we conclude that the district court did not err in dismissing 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. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976). Accordingly, we affirm the order of the district court.

It is so ORDERED.¹

Young, J.
Young
Rose, J.
Rose
Becker, J.
Becker

cc: Hon. Richard A. Wagner, District Judge
Attorney General
Lander County District Attorney
William O. Gibbons
Lander County Clerk

¹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.