

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL LUDWIG WOLFF,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53115

FILED

SEP 25 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. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

On November 18, 2004, the district court convicted appellant, pursuant to a jury verdict, of robbery with the use of a deadly weapon and first-degree murder with the use of a deadly weapon.¹ The district court sentenced appellant to serve two consecutive terms of 40 to 180 months in the Nevada State Prison for the robbery and two consecutive terms of life without the possibility of parole for the murder. The terms for both counts were ordered to run consecutively. This court affirmed appellant's judgment of conviction and sentence. Wolff v. State, Docket No. 44420 (Order of Affirmance, September 27, 2006). The remittitur issued on October 24, 2006.

¹On December 10, 2004, the district court filed an amended judgment of conviction and on January 4, 2005, the district court filed a second amended judgment of conviction. It appears these amended judgments of convictions corrected appellant's credit for time served and included the amount of restitution appellant was ordered to pay.

On September 6, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition and filed a motion to dismiss. Appellant did not respond. 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 December 24, 2008, the district court denied appellant's petition. This appeal followed.

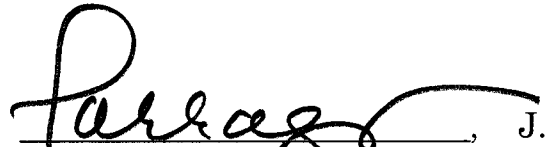
In his petition, appellant raised fifteen claims: (1) his due process rights were violated because the jury was possibly "contaminated;" (2) the district court erred in denying appellant's motion for mistrial; (3) the district court erred in denying a challenge based on Batson v. Kentucky, 476 U.S. 79 (1986); (4) the district court erred in denying motion to preclude evidence based on Brady v. Maryland, 373 U.S. 83 (1963); (5) the district court erred in denying appellant the opportunity to impeach a witness for the State; (6) the district court erred by overruling an objection and denying a motion for mistrial regarding the State's witness Dr. Mohandie; (7) appellate counsel was ineffective for failing to raise the above claims on appeal; (8) the district court erred by allowing "gruesome" photos to be presented to the jury; (9) the district court erred by not sua sponte declaring a mistrial; (10) the district court erred in giving the express malice instruction; (11) the reasonable doubt instruction is unconstitutional; (12) the district court erred by allowing a psychologist to testify about appellant's veracity; (13) the State committed prosecutorial misconduct; (14) trial counsel was ineffective for not requesting a mistrial about the GHB reporting error; and (15) cumulative error.

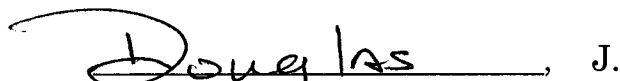
Appellant filed his petition approximately two years after this court issued the remittitur from his direct appeal. Thus, appellant's

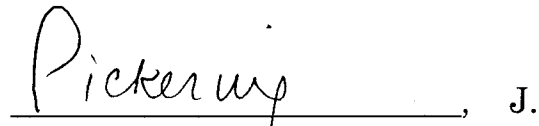
petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice. See id. Appellant failed to allege any good cause or prejudice arguments for failing to file this petition within the one-year time limit. Therefore the district court did not err in denying this 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.


Parraguirre J.


Douglas J.


Pickering J.

cc: Hon. Kenneth C. Cory, District Judge
Daniel Ludwig Wolff
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk