


IN THE SUPREME COURT OF THE STATE OF NEVADA

RON DWAYNE DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53204

FILED

OCT 21 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; William A. Maddox, Judge.

On September 6, 1995, the district court convicted appellant, pursuant to a guilty plea, of one count of principal to murder with the use of a deadly weapon and one count of first-degree kidnapping with the use of a deadly weapon. The district court sentenced appellant to serve three consecutive terms of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction. Davis v. State, Docket No. 28975 (Order Dismissing Appeal, September 23, 1996).

On January 21, 1997, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied the petition without prejudice, citing to appellant's failure to verify the petition. This court dismissed the subsequent appeal,

confirming in the order that the district court had dismissed the petition without prejudice for appellant to cure the defect. Davis v. State, Docket No. 29938 (Order Dismissing Appeal, April 21, 1997).

On July 8, 2002, more than five years after the denial of the post-conviction appeal, appellant filed an amended petition for a writ of habeas corpus in the district court. The district court denied the petition. This court affirmed the order of the district court denying the petition. Davis v. State, Docket No. 40618 (Order of Affirmance, October 21, 2003).

On October 30, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing the petition was untimely filed, raised a claim outside the scope of NRS 34.810(1)(a), and successive. Moreover, the State specifically pleaded laches. 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 January 7, 2009, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant claimed that the deadly weapon enhancement violated double jeopardy and that he was prevented from raising this claim on direct appeal due to counsel's failure to file a direct appeal.

Appellant filed his petition more than thirteen years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a petition raising the claim regarding counsel's failure to file a direct appeal and an abuse of the writ

because the claim challenging the deadly weapon enhancement was new and different. 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).

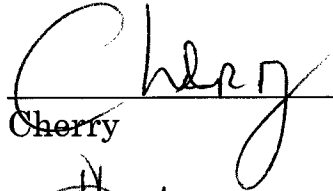
In an attempt to excuse his procedural defects, appellant claimed that it was trial counsel's failure to file an appeal that prevented him from raising this claim earlier.

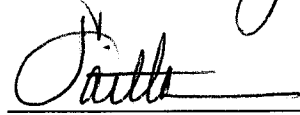
Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing the petition as procedurally barred and without good cause. Appellant's claims relating to the deadly weapon enhancement and the ineffective assistance of counsel could reasonably have been raised in a timely petition. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 50, 506 (2003). In fact, this court previously rejected appellant's contention that the failure to file a direct appeal provided good cause for the filing of his first untimely petition. The doctrine of the law of the case prevents further litigation of this issue. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975). Appellant did not attempt to overcome the presumption of prejudice to the State. Therefore, we affirm the order of the district court.

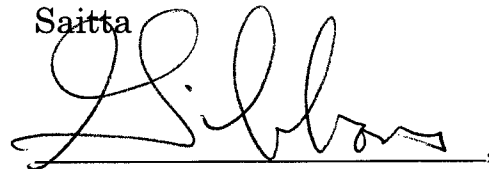
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted. See Lockett v. Warden, 91

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: First Judicial District Court Dept. 2, District Judge
Ron Dwayne Davis
Attorney General Catherine Cortez Masto/Carson City
Carson City District Attorney
Carson City Clerk