

IN THE SUPREME COURT OF THE STATE OF NEVADA

FELTON L. MATTHEWS, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53552

**FILED**

OCT 21 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; Donald M. Mosley, Judge.

On May 13, 2002, the district court convicted appellant, pursuant to a guilty plea, of two counts of lewdness with a child under the age of fourteen. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after ten years. This court affirmed the judgment of conviction on direct appeal. Matthews v. State, Docket No. 39717 (Order of Affirmance, July 9, 2003). The remittitur issued on August 5, 2003.

On May 17, 2004, appellant filed a proper person-post-conviction petition for a writ of habeas corpus in the district court. On December 9, 2004, the district court denied the petition. On appeal, this court affirmed the district court's denial of the petition. Matthews v. State, Docket No. 43822 (Order of Affirmance, March 10, 2005).

On January 23, 2006, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. On May 22, 2006, the district court denied appellant's petition. On

appeal, this court affirmed the district court's denial of the petition. Matthews v. State, Docket No. 47145 (Order of Affirmance, October 3, 2006).

On October 23, 2007, appellant filed a third proper person post-conviction petition for a writ of habeas corpus. On January 10, 2008, the district court dismissed the petition. On appeal, this court affirmed the order of the district court. Matthews v. State, Docket No. 50871 (Order of Affirmance, Aug 12, 2008).

On September 8, 2008, appellant filed a fourth proper person post-conviction petition for a writ of habeas corpus. On October 3, 2008, the district court dismissed the petition. On appeal, this court affirmed the order of the district court. Matthews v. State, Docket No. 52582 (Order of Affirmance, August 21, 2009).

On January 16, 2009, appellant filed a fifth proper person post-conviction petition for a writ of habeas in the district court. The State opposed the petition on the grounds that the petition was untimely, successive, and barred by 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 April 6, 2009, the district court denied the petition. This appeal follows.

In his petition, appellant appeared to claim as follows: (1) his plea was not knowing and voluntary because of a conspiracy involving confidential informants, Clark County Detention Center guards, and the police to attack him and tell lies about him; (2) his sentence is unconstitutional and violated double jeopardy because of sentencing manipulation; (3) his appellate counsel was ineffective for failing to identify sentencing manipulation by the State and the State's witnesses;

(4) the spirit of the plea deal was violated because the State did not follow criminal law procedures; (5) his appellate counsel was ineffective for failing to accept his phone calls and answer his letters; (6) the Presentence Investigation Report and the psychosexual evaluation were erroneous; and (7) the State interfered with his mail and in his litigation.

The petition was filed more than six 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 post-conviction petitions for a writ of habeas in which he raised claims 4, 6, and 7. See NRS 34.810(2). Further, appellant's petition constituted an abuse of the writ as claims 1, 2, 3, and 5 were new and different from those claims raised in his previous post-conviction petitions for a writ of habeas corpus. 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). In addition, because the State specifically pleaded laches, he was required to overcome the presumption of prejudice to the State. See NRS 34.800(2).

To excuse his procedural defects, appellant claimed that he recently discovered the information that confidential informants, Clark County Detention Center guards, and the police conspired to attack him and lie about him. He appeared to claim that the information in his psychosexual evaluation stating that he had violent homosexual and suicidal tendencies came from the confidential informants. Appellant claimed that the conspiracy shows outrageous government conduct and should allow him to withdraw his plea. We disagree. Appellant failed to demonstrate a government conspiracy and failed to demonstrate that any information relating to an attack that occurred while he was incarcerated

in a detention center should provide good cause to raise untimely claims concerning the judgment of conviction. In addition, the underlying claim regarding his psychosexual evaluation is beyond the scope of a post-conviction petition for a writ of habeas corpus based on a guilty plea. NRS 35.810(1)(a). Therefore, the district court did not err in denying this good cause claim.

Based upon our review of the documents before this court, we conclude that the district court did not err in denying appellant's petition as procedurally barred. Appellant's petition is subject to the procedural bars in NRS 34.726(1), NRS 34.800(2), and NRS 34.810(2). Appellant failed to demonstrate good cause to excuse the procedural defects or that an impediment external to the defense excused the procedural defects. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994). Finally, appellant failed to overcome the presumption of prejudice to the State. NRS 34.800(2). Further, appellant's claim that the prison is interfering with his mail and his litigation is not cognizable in a post-conviction petition for a writ of habeas corpus. This court has "repeatedly held that a petition for [a] writ of habeas corpus may challenge the validity of current confinement, but not the conditions thereof." Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984); see also Sandin v. Conner, 515 U.S. 472, 484 (1995) (holding that liberty interests protected by the Due Process Clause will generally be limited to freedom from restraint which "imposes [an] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life"). Therefore, the district court did not err in denying the petition as procedurally barred.

As set forth earlier, appellant has filed a number of post-conviction challenges. NRS 209.451(1) provides that if an offender:

(d) In a civil action, in state or federal court, is found by the court to have presented a pleading, written motion or other document in writing to the court which:

(1) Contains a claim or defense that is included for an improper purpose, including, without limitation, for the purpose of harassing his opponent, causing unnecessary delay in the litigation or increasing the cost of the litigation;

(2) Contains a claim, defense or other argument which is not warranted by existing law or by a reasonable argument for a change in existing law or a change in the interpretation of existing law; or

(3) Contains allegations or information presented as fact for which evidentiary support is not available or is not likely to be discovered after further investigation,

he forfeits all deductions of time earned by him before the commission of that offense or act, or forfeits such part of those deductions as the director considers just.

In addition to the actions listed previously, appellant has filed numerous documents raising claims challenging the validity of his judgment of conviction and the proceedings in the district court.<sup>1</sup> In

---

<sup>1</sup>Matthews v. District Court, Docket Nos. 40709, 40902 (Order Denying Petitions, March 3, 2003); Matthews v. District Court, Docket No. 40605 (Order Denying Petition, December 19, 2002); Matthews v. District Court, Docket No. 40568 (Order Denying Petition, December 12, 2002); Matthews v. District Court, Docket No. 40468 (Order Denying Petition, November 22, 2002); Matthews v. State, Docket No. 40299 (Order Denying Petition, October 15, 2002); Matthews v. State, Docket No. 40033 (Order Denying Petition, August 22, 2002); Matthews v. State, Docket No. 39885 (Order Denying Petition, July 30, 2002); Matthews v. State, Docket No.

*continued on next page . . .*

denying appellant's petitions for extraordinary relief in Docket Nos. 40468, 40709 and 40902, this court cautioned appellant that a prisoner could forfeit all deductions of time earned by the prisoner if the court finds that the prisoner has filed a document in a civil action for an "improper purpose." Further, this court cautioned petitioner that his actions may constitute a major violation of the Code of Penal Discipline.<sup>2</sup> In addition, appellant continued to file documents for an improper purpose and was referred to the Director of the Department of Corrections to determine if the forfeiture of credits was warranted in Docket No. 41149. For the purposes of NRS 209.451, a writ of habeas corpus is a civil action. Appellant's continuous stream of filings is an abuse of this court's

---

*... continued*

39837 (Order Denying Petition, July 22, 2002); Matthews v. State, Docket No. 39014 (Order Denying Petition, January 22, 2002). Additionally, this court has dismissed four appeals filed by petitioner for lack of jurisdiction. Matthews v. State, Docket Nos. 38307, 38379, 38380 (Order Dismissing Appeals, October 1, 2001); Matthews v. State, Docket No. 38225 (Order Dismissing Appeal, August 30, 2001).

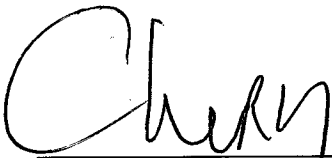
<sup>2</sup>Nevada Code Dep't of Corr., Admin Reg. 707, § 707.05(5)(MJ 48)(2009) provides that the following is a major violation of the Code:

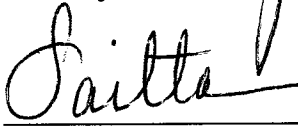
Any violation of the Rules of Court, contempt of court, submission of forged or otherwise false documents, submissions of false statements, violations of Rules of Civil Procedure, Criminal Procedure or Appellate Procedure and/or receiving sanctions and/or warnings for any such actions from any court. Although not necessary for disciplinary purposes, any Order from any court detailing such action shall be sufficient evidence for disciplinary purposes.

appellate and original jurisdiction. The petition contains allegations or information presented as fact for which evidentiary support is not available and is not likely to be discovered after investigation. Pursuant to NRS 209.451(3), the Director of the Department of Corrections shall determine what forfeiture of credits, if any, is warranted. The Director of the Department of Corrections shall conduct whatever prison disciplinary proceedings deemed necessary.

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.<sup>3</sup>

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

---

<sup>3</sup>We 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. Donald M. Mosley, District Judge  
Felton L. Matthews, Jr.  
Director Howard Skolnik, Department of Corrections  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk