

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL JAMES COOPER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53744

**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; Stefany Miley, Judge.

On May 24, 2002, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon and one count of possession of a firearm by an ex-felon. The district court sentenced appellant to serve two consecutive terms of 48 to 180 months in the Nevada State Prison for the robbery count and a concurrent term of 13 to 60 months for the possession count. This court affirmed the judgment of conviction on direct appeal. Cooper v. State, Docket No. 39608 (Order of Affirmance, January 16, 2003). The remittitur issued on February 11, 2003.

On August 12, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court denied the petition.

Appellant filed a notice of appeal and sought reconsideration in the district court. The district court was inclined to grant reconsideration and entered an order seeking a remand of jurisdiction. This court entered an order of remand returning jurisdiction to the district court. Cooper v. State, Docket No. 42727 (Order of Remand, June 3, 2004). The district court conducted an evidentiary hearing on a few of the claims raised in the petition. The district court entered an order denying the petition, and this court affirmed the order of the district court denying the petition on appeal.<sup>1</sup> Cooper v. State, Docket No. 43976 (Order of Affirmance, April 5, 2005).

On March 30, 2009, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 18, 2009, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that he received ineffective assistance of trial counsel: (1) for failing to investigate his alibi witnesses; (2) for failing to file all pretrial motions and examine discovery; (3) for failing to investigate his claim of innocence by securing a surveillance tape

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<sup>1</sup>Appellant attempted to raise additional claims in documents filed on August 5, 2004, and on September 16, 2004. However, the district court declined to consider the additional claims. NRS 34.750(5).

and interview security personnel; and (4) for failing to request a competency hearing.

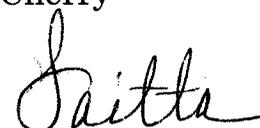
Appellant filed his petition more than six years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus and claim 1 was previously decided on the merits against him. See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was also an abuse of the writ as claims 2, 3 and 4 were not raised in the August 12, 2003 petition or decided on the merits in the prior proceedings. Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

In an attempt to excuse his procedural defects, appellant argued that he was required to exhaust state remedies for purposes of federal review. Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition as procedurally barred. Raising claims in an untimely and successive petition for purposes of exhaustion is not good cause. Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense). These claims were reasonably available to be raised in the August 12, 2003 petition. Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003). Because appellant failed to demonstrate good cause, we affirm the decision of the district court denying the 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.

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

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

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

cc: Hon. Stefany Miley, District Judge  
Michael James Cooper  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk