

IN THE SUPREME COURT OF THE STATE OF NEVADA

CEDRIC O'NEAL HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53914

CEDRIC O'NEAL HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54182

FILED

JAN 08 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Docket No. 53914 is a proper person appeal from an order of the district court denying a petition for a writ of mandamus. Docket No. 54182 is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. We elect to consolidate these appeals for disposition. NRAP 3(b). Eighth Judicial District Court, Clark County; David Wall, Judge.

Docket No. 53914

Appellant's claim that the district court failed to follow proper procedures in adjudicating him as a habitual criminal cannot be raised in a mandamus petition. Appellant may not challenge the validity of the judgment of conviction in a mandamus petition as he has an adequate, legal remedy for such a challenge—a direct appeal or a petition for a writ

of habeas corpus. NRS 34.170; NRS 34.724. Therefore, we affirm the order of the district court denying the petition.

Docket No. 54182

In appellant's proper person post-conviction petition for a writ of habeas corpus, appellant claimed that he was deprived of a direct appeal due to ineffective assistance of counsel and appellant challenged his habitual criminal adjudication. The district court denied the petition without appointing counsel or conducting an evidentiary hearing. NRS 34.750, NRS 34.770.

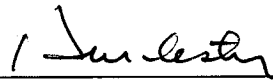
The petition was untimely as it was filed on March 30, 2009, almost nineteen years after entry of the judgment of conviction, July 19, 1990.¹ See NRS 34.726(1). Moreover, the petition was successive because appellant had previously litigated a petition for post-conviction relief and two post-conviction petitions for a writ of habeas corpus, Howard v. State, Docket No. 49548 (Order of Affirmance, April 25, 2008); Howard v. State, Docket Nos. 25968 and 25971 (Order Dismissing Appeals, September 29, 1994). Howard v. State, Docket No. 23529 (Order Dismissing Appeal, October 22, 1992), and appellant was rearguing claims previously litigated. See NRS 34.810(2). Thus, appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(3). Appellant's explanation that he waited for his attorney to file a direct appeal before he filed his first petition did not provide good cause for the entire length of his delay or for the successive nature of the petition. Hathaway v. State, 119 Nev. 248, 71 P.3d 503

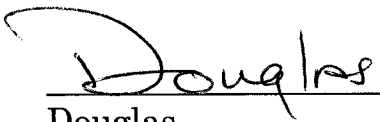
¹No direct appeal was taken. Further, the petition was filed more than sixteen years after the January 1, 1993 effective date of NRS 34.726.


(2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994). Therefore, we affirm the order 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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgments of the district court AFFIRMED.²


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. David Wall, District Judge
Cedric O'Neal Howard
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in these matters, 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.