

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY ROOSEVELT FUDGE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34951

FILED

JUL 10 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

On January 5, 1990, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault of a minor under the age of fourteen.¹ The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole, a minimum of ten years to be served before parole eligibility. Appellant did not file a direct appeal.

On August 30, 1993, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. On September 30, 1993, the district court denied appellant's petition without appointing counsel or conducting an evidentiary hearing. This court dismissed appellant's subsequent appeal from the order of the district court denying his petition.²

¹In exchange for his guilty plea, the State agreed to the dismissal of one count of use of a minor in the production of pornography, ten counts of sexual assault on a minor under the age of fourteen, five counts of lewdness with a minor, one count of open and gross lewdness, two counts of indecent exposure, and one count of child abuse.

²Fudge v. State, Docket No. 25402 (Order Dismissing Appeal, May 24, 1994).

On May 19, 1995, appellant filed a second post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On August 2, 1995, the district denied appellant's petition without appointing counsel or conducting an evidentiary hearing. Appellant's appeal was docketed in this court in Docket No. 27461. On October 6, 1997, appellant filed a third post-conviction petition for a writ of habeas corpus in the district court. The State opposed appellant's petition. On January 12, 1998, the district court issued an oral decision to deny the petition, from which appellant filed a notice of appeal docketed in this court in Docket No. 31988. On March 27, 1998, the district court filed a written order denying the petition, from which appellant filed a second notice of appeal docketed in this court in Docket No. 32180. This court consolidated the appeals for disposition, ordered that Docket No. 32180 be administratively closed, and dismissed the appeals in Docket Nos. 27461 and 31988.³

On June 28, 1999, appellant filed a fourth proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a reply. 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 November 22, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his fourth petition challenging his conviction more than nine years after entry of the judgment of

³Fudge v. State, Docket Nos. 27461, 31988, 32180 (Order Dismissing Appeals, January 14, 1999).

conviction. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had previously filed three post-conviction petitions for writs of habeas corpus.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶

In an attempt to excuse his procedural defects, appellant argued that he only recently learned that he would have to be certified pursuant to former NRS 200.375 before he would be eligible for release on parole.⁷ Appellant argued that his plea was involuntary because he was not informed of the certification requirement at the time he entered his guilty plea. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant's petition was procedurally barred. Appellant's good cause argument is insufficient to overcome the procedural defects in his petition.⁸ Moreover, we conclude that appellant failed to demonstrate prejudice pursuant to NRS 34.726(1) and NRS 34.810(3) because his claim challenging the voluntariness of his guilty plea lacked merit.⁹

⁴See NRS 34.726(1).

⁵See NRS 34.810(2).

⁶See NRS 34.726(1); NRS 34.810(3).

⁷NRS 200.375 was repealed effective October 1, 1997, see 1997 Nev. Stat., ch. 524, § 22, at 2513, and codified under NRS 213.1214. Appellant is required to be certified prior to release on parole pursuant to NRS 213.1214.

⁸See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

⁹See Anushevitz v. Warden, 86 Nev. 191, 467 P.2d 115 (1970) (holding that the trial court had no duty to advise a defendant of the parole consequences of his guilty plea); see also Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986) (holding that a guilty plea is presumptively valid and that it is the burden of the defendant to demonstrate that the plea was not entered knowingly and intelligently).

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young, J.
Young
Leavitt, J.
Leavitt
Becker, J.
Becker

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General
Clark County District Attorney
Roy Roosevelt Fudge
Clark County Clerk

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).