

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP JACKSON LYONS,
Appellant,
vs.
NEVADA BOARD OF PAROLE
COMMISSIONERS,
Respondent.

No. 54231

PHILLIP JACKSON LYONS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54598

FILED

APR 08 2010

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

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying a petition for a writ of habeas corpus or alternatively petition for a writ of mandamus and a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge. We elect to consolidate these appeals for disposition.¹ NRAP 3(b).

¹These appeals have been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

Docket No. 54231

In his petition for a writ of habeas corpus or alternatively writ of mandamus filed on April 29, 2009, appellant claimed that he was denied a fair parole hearing because he was asked questions about a dismissed charge and allegedly treated as a sex offender, and the parole board relied on standards that were condemned by an individual hired to review the standards.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition.² Appellant had no right to be granted parole as parole is an act of grace and a prisoner has no right to serve less than the lawfully imposed sentence, and appellant failed to demonstrate that the decision to deny parole was arbitrary or capricious or a violation of any protected constitutional right. See NRS 213.10705 (providing that the establishment of parole standards does not create any right or interest in liberty or property or establish a basis for any cause of action against the State); NRS 213.1099(1) (providing that the decision to release on parole is discretionary); Weakland v. Bd. of Parole Comm'rs, 100 Nev. 218, 678 P.2d 1158 (1984) (recognizing that Nevada's parole statutory scheme did not create a constitutionally cognizable liberty interest).

Docket No. 54598

Appellant filed his petition on June 25, 2008, more than fifteen years after the remittitur issued from his direct appeal on February 23, 1993. Lyons v. State, Docket No. 22332 (Order Dismissing Appeal,

²The claims raised in the petition were cognizable only to the extent discussed herein.

February 3, 1993). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously pursued post-conviction relief.³ See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); 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).

Appellant argued that this court's decision in Mendoza v. State, 122 Nev. 267, 130 P.3d 176 (2006), provided good cause to challenge his robbery and kidnapping conviction. Even assuming Mendoza announced a new constitutional rule, Mendoza does not provide good cause in this case as appellant's petition was filed more than two years after the decision in Mendoza and appellant did not demonstrate good cause for the entire length of his delay.⁴ Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). To the extent that appellant claimed

³Lyons v. State, Docket No. 26436 (Order Dismissing Appeal, February 10, 1998); Lyons v. State, Docket No. 35151 (Order of Affirmance, August 7, 2001); Lyons v. State, Docket No. 50002 (Order of Affirmance, January 10, 2008).

⁴Entry of an amended judgment of conviction would not provide good cause in this case because the claims raised in the petition do not relate to the amended judgment of conviction. Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004). Appellant's claim that the district court lacked subject matter jurisdiction because of an alleged error in the information was patently without merit and did not implicate the district court's jurisdiction. Nev. Const. art. 6, § 4; NRS 171.010; NRS 173.025; NRS 173.075(1).

that he was actually innocent because the judgment of conviction mentioned a dismissed count of sexual assault and failed to set forth the parole eligibility term, neither of these errors demonstrated a fundamental miscarriage of justice.⁵ Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Finally, appellant failed to overcome the presumption of laches. Accordingly, we

ORDER the judgments of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Phillip Jackson Lyons
Attorney General/Las Vegas
Eighth District Court Clerk

⁵Further, we note that the district court entered an amended judgment of conviction to correct these errors. To the extent that appellant claimed that he was actually innocent due to the dual convictions for robbery and kidnapping, this court has previously considered and rejected this argument. 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).