IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN R. HALVERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54992

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.[1] Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Appellant's petition filed on August 11, 2009 was appellant's second petition challenging the validity of his judgment of conviction and sentence, and thus, was subject to the successive and abuse of the writ provisions of NRS 34.810(2).[2] Appellant's petition was procedurally

[1]This appeal has 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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[2]Appellant's judgment of conviction was affirmed on direct appeal. Halversen v. State, Docket No. 50821 (Order of Affirmance, January 22, 2009). The remittitur issued on February 17, 2009. Appellant filed his first post-conviction petition for a writ of habeas corpus while his direct appeal was pending, and this court affirmed the denial of appellant's petition. Halversen v. State, Docket No. 52000 (Order of Affirmance, April 21, 2009).

barred absent a demonstration of good cause and actual prejudice. NRS 34.810(3).

Appellant first claimed that he had good cause because he believed the district court lacked jurisdiction to consider his first petition while the direct appeal was pending in this court. Thus, he argued the August 11, 2009 petition should be considered the first petition. Appellant's belief is mistaken. A post-conviction petition for a writ of habeas corpus is an independent proceeding that seeks collateral review of the conviction, and thus, it may be litigated contemporaneously with the direct appeal and a pending direct appeal would not divest the district court of jurisdiction to consider the collateral petition. NRS 34.724(2)(a) (providing that a habeas corpus petition is not a substitute for and does not affect the remedy of direct review); NRS 34.730(3) (providing that the clerk of the district court shall file a habeas corpus petition as a new action separate and distinct from any original proceeding in which a conviction has been had); Daniels v. State, 100 Nev. 579, 580, 688 P.2d 315, 316 (1984) (recognizing that a post-conviction proceeding is separate from the direct appeal); Groesbeck v. Warden, 100 Nev. 259, 260, 679 P.2d 1268, 1268-69 (1984) (recognizing that a post-conviction habeas corpus petition is a petition seeking collateral review).[3] Therefore, the district court did not err in rejecting this good cause argument.

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[3]Appellant's reliance on Buffington v. State, 110 Nev. 124, 868 P.2d 643 (1994), was misplaced as Buffington would not divest the district court from considering collateral matters.

Second, appellant claimed that he had good cause because he had no legal training and received bad advice from other inmates. The lack of legal training and poor assistance from other inmates would not provide good cause. Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988). Therefore, the district court did not err in rejecting this good cause argument.

To the extent that appellant claimed that his appellate counsel was ineffective because appellant had previously tried to dismiss him, and appellate counsel failed to argue that the plea agreement was materially altered without his knowledge or consent and the district court could not impose more than one habitual criminal sentence in a single judgment of conviction, appellant may have had good cause because he could not have litigated these issues while the direct appeal was pending. However, appellant failed to demonstrate actual prejudice, any errors worked to a petitioner's actual and substantial disadvantage, because none of these claims would have had a reasonable probability of success on appeal, and thus, his appellate counsel would not have been ineffective in failing to raise these claims.[4] Hogan v. Warden, 109 Nev. 952, 959-60, 860

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[4]This court's review of the plea agreement alteration claim on direct appeal would have been limited to the face of the document as any further arguments would have required exploration of facts outside the record on appeal. Notably, the interlineations were initialed by appellant and the plea canvass indicates that the additional language regarding dismissed charges was witnessed by appellant during the plea canvass. NRS 207.010 does not limit habitual criminal adjudication to a single count in the judgment of conviction.

P.2d 710, 716 (1993); see also Jones v. Barnes, 463 U.S. 745, 751 (1983); Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Therefore, the district court did not err in determining that these claims were barred by NRS 34.810. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Linda Marie Bell, District Judge
Steven R. Halverson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk