

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABDUL HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55069 ✓

ABDUL HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55641

FILED

JUN 10 2010

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

ORDER OF AFFIRMANCE

Docket No. 55069 is a proper person appeal from an order of the district court denying appellant's motion for a writ of mandamus/prohibition. Docket No. 55641 is a proper person appeal from an order of the district court denying appellant's "petition for writ of habeas corpus or, in the alternative, petition for writ of habeas corpus (post-conviction) or, in the alternative, petition for writ of mandamus or, in

the alternative, petition for declaratory judgment.”¹ Eighth Judicial District Court, Clark County; Doug Smith, Judge.

Docket No. 55069

In his motion, filed on November 3, 2009, appellant requested that the district attorney provide him with a Nevada Revised Statute citation that specifically refers to “robbery with the use of a deadly weapon” or that allows the deadly weapon enhancement of NRS 193.165 to be combined with an underlying offense. The district court denied the motion.

After a review of the record on appeal, we affirm the order of the district court because appellant failed to demonstrate that he was entitled to the relief requested. See NRS 34.160; NRS 34.170; NRS 34.320; NRS 34.330.

Docket No. 55641

Appellant filed his petition on February 9, 2010, over five years after this court’s June 4, 2004, issuance of the remittitur from his

¹Because appellant challenged the validity of his conviction and sentence, we conclude that the district court properly construed appellant’s petition as a post-conviction petition for writ of habeas corpus. See NRS 34.724(2)(b).

These 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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

direct appeal. See Howard v. State, Docket No. 42344 (Order of Affirmance, May 10, 2004). Appellant's petition was therefore untimely filed. See NRS 34.726(1). Appellant's petition also constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.² 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 neither argued nor demonstrated that he had good cause to excuse the procedural defects.³ Appellant also failed to demonstrate any fundamental miscarriage of justice to overcome these procedural bars. See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920,

²Howard v. State, Docket No. 45421 (Order of Affirmance, September 23, 2005).

³Appellant claimed that the 2007 amendments to NRS 193.165 should be applied retroactively to his case. To the extent this claim could be construed as a good-cause argument, appellant's claims would still have failed. First, the amendments do not apply retroactively. State v. Dist. Ct. (Pullin), 124 Nev. 564, 571, 188 P.3d 1079, 1983-84 (2008). Second, the amendments became effective July 1, 2007, 2007 Nev. Stat., ch. 525, §13, at 3188; 2007 Nev. Stat., ch 525, § 22, at 3196, and therefore would not have excused the entire length of the delay.

Appellant also claimed that the district court lacked jurisdiction over his case. To the extent this claim could be construed as an attempt to avoid procedural bars, appellant's claim is patently without merit. Cf. Pendleton v. State, 103 Nev. 95, 98, 734 P.2d 693, 695 (1987).

922 (1996). We therefore conclude that the district court did not err in denying appellant's petition as procedurally barred.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.⁴

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Doug Smith, District Judge
Abdul Howard
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, 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.