

IN THE SUPREME COURT OF THE STATE OF NEVADA

AUGUSTUS WILLIAM FALLS,

No. 35042

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUN 26 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rubash*
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 September 19, 1985, the district court convicted appellant, after a jury trial, of two counts of sexual assault with the use of a deadly weapon. The district court sentenced appellant to serve four consecutive terms of life in the Nevada State Prison with the possibility of parole.

Appellant filed a notice of appeal from his conviction. Appellant's appeal was docketed in this court in Docket No. 16895. Appellant filed a motion to hold his appeal in abeyance pending resolution of a post-conviction petition. This court granted that motion. On July 21, 1986, appellant filed a proper person petition for post-conviction relief in the district court. The State opposed the petition. On December 1, 1986, after appointing counsel and conducting an evidentiary hearing, the district court denied the petition. This court consolidated the appeals and dismissed appellant's direct appeal and the appeal from the denial of his post-conviction petition.¹ The remittitur issued on March 15, 1988.

¹Falls v. State, Docket No. 16895 (Order Dismissing Appeal, February 25, 1988).

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On May 31, 1995, appellant filed a proper person motion to correct and vacate an illegal sentence in the district court. The State opposed the motion. On August 7, 1997, the district court denied the motion. This court dismissed appellant's subsequent appeal.²

On July 6, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 October 6, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than eleven years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Moreover, appellant's petition was successive because he had previously filed a petition for post-conviction relief.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ Pursuant to NRS 34.730(2) and NRS 34.735, appellant was required to demonstrate good cause on the face of his petition.

In an attempt to excuse his procedural defects, appellant appeared to argue that he could not challenge the deadly weapon enhancements in earlier proceedings because what constitutes a deadly weapon had not been defined at the time he committed his crime. Appellant argued that an exacto knife should not have been found to be a deadly weapon. Based upon

²Falls v. State, Docket No. 27447 (Order Dismissing Appeal, April 20, 1998).

³See NRS 34.726(1).

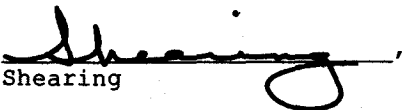
⁴See NRS 34.810(1)(b)(2); NRS 34.810(2).

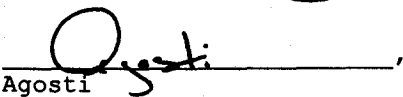
⁵See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

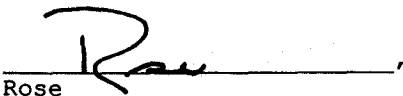
our review of the record on appeal, we conclude that the district court did not err in concluding that appellant failed to demonstrate adequate cause to excuse his procedural defects.⁶ Appellant further failed to demonstrate prejudice pursuant to NRS 34.726(1) and NRS 34.810(3).⁷

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing J.


Agosti J.


Rose J.

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General
Clark County District Attorney
Augustus William Falls
Clark County Clerk

⁶See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

⁷See Clem v. State, 104 Nev. 351, 760 P.2d 103 (1988), overruled by Zgombic v. State, 106 Nev. 571, 798 P.2d 548 (1990); see also Bridgewater v. Warden, 109 Nev. 1159, 865 P.2d 1166 (1993) (declining to give Zgombic retroactive effect).

⁸See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).