

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 55760

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

No. 56523

FILED

MAR 17 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Docket No. 55760 is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Docket No. 56523 is a proper person appeal from an order of the district court denying a motion to vacate, clarify or correct an illegal sentence.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge. We elect to consolidate these appeals for disposition. See 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).

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Appellant filed his petition on December 30, 2009, over sixteen years after issuance of the remittitur on direct appeal on February 23, 1993. Lyons v. State, Docket No. 22332 (Order Dismissing Appeal, February 3, 1993). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was also successive because he had previously filed post-conviction petitions for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petitions.² NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was therefore procedurally barred absent a demonstration of good cause and actual prejudice. NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3). Moreover, because the State specifically pleaded laches, appellant was required to overcome the rebuttable presumption of prejudice. NRS 34.800(2).

Appellant first argued that the procedural bars did not apply because he was not challenging the validity of the judgment of conviction but rather the constitutionality of the laws at issue, jurisdiction, and this court's interpretation of NRS 193.165. Appellant's argument was without merit. Appellant's claims challenged the validity of the judgment of

²Lyons 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); Lyons v. State, Docket Nos. 54231, 54598 (Order of Affirmance, April 8, 2010).

conviction, and thus, the procedural bars do apply in this case.³ NRS 34.720(1); NRS 34.724(1).

Next, appellant appeared to argue that a fundamental miscarriage of justice should overcome application of the procedural bars. Specifically, he argued that his due process rights had been violated because the laws reproduced in the Nevada Revised Statutes did not contain an enacting clause as required by the Nevada Constitution. Nev. Const. art. 4, § 23.⁴ He further claimed that this court erroneously interpreted NRS 193.165 to require a consecutive sentence and that the kidnapping and robbery statutes were void for vagueness for not referring to the deadly weapon enhancement. Appellant did not demonstrate a fundamental miscarriage of justice as his arguments fell short of demonstrating actual innocence. Calderon v. Thompson, 523 U.S. 538, 559 (1998); Schlup v. Delo, 513 U.S. 298, 327 (1995); see also 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). Further, appellant failed to overcome the presumption of prejudice to the State. We therefore conclude that the district court did not err in denying appellant's petition.⁵

³Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010.

⁴We note that the Statutes of Nevada contain the laws with the enacting clauses required by the constitution. The Nevada Revised Statutes reproduce those laws as classified, codified, and annotated by the Legislative Counsel. NRS 220.120.


⁵We further conclude that the district court did not err in denying his request for a writ of mandamus or declaratory judgment. NRS 34.170.

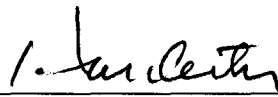
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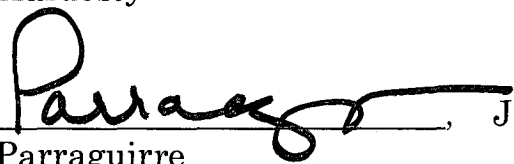
In his motion, filed on June 21, 2010, appellant claimed that his sentence was illegal because the second amended judgment of conviction varied from the initial oral pronouncement of his sentence; the district court must have misapprehended the range of sentencing options available to it; and NRS 200.320(2), under which appellant was convicted, was unconstitutionally vague. Appellant failed to demonstrate that the district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Appellant also failed to demonstrate that his sentence was facially illegal or that the district court lacked jurisdiction. Id. We therefore conclude that the district court did not err in denying appellant's motion.

For the foregoing reasons, we

ORDER the judgments of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Elissa F. Cadish, District Judge
Phillip Jackson Lyons
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk