

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP JACKSON LYONS,

No. 35151

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

AUG 07 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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 May 2, 1991, the district court convicted appellant, after a jury trial, of one count of first degree kidnapping with the use of a deadly weapon (count I) and one count of robbery with the use of a deadly weapon (count II). The district court sentenced appellant to serve the following terms in the Nevada State Prison: for count I, two consecutive terms of life with the possibility of parole; and for count II, two consecutive terms of nine years, to be served concurrently to count I. This court dismissed appellant's direct appeal.¹ The remittitur issued on February 23, 1993.

On July 16, 1993, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On January 4, 1995, after conducting an evidentiary hearing, the district court denied the petition. This court dismissed the subsequent appeal.²

¹Lyons v. State, Docket No. 22332 (Order Dismissing Appeal, February 3, 1993).

²Lyons v. State, Docket No. 26436 (Order Dismissing Appeal, February 10, 1998).

On August 4, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that the petition was procedurally time barred and successive. Moreover, the State specifically pleaded laches. 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 December 9, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than six 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 post-conviction petition for a writ of habeas corpus.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁶

In an attempt to excuse his procedural defects, appellant argued that he was raising the claims as violations of the United States Constitution in order to exhaust state remedies. Based upon our review of the record on appeal, we conclude that the district court did not err in determining appellant failed to demonstrate sufficient cause to overcome the procedural defects and failed to overcome the presumption of prejudice to the State.⁷

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).

⁶See NRS 34.800(2).

⁷See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

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.

Young, J.
Young

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. Jack Lehman, District Judge
Attorney General
Clark County District Attorney
Phillip Jackson Lyons
Clark County Clerk

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