

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS C. BURDSAL, JR.,

No. 35202

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

SEP 12 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rehak*
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 July 1, 1991, the district court convicted appellant, pursuant to a guilty plea, of one count of first degree murder and one count of sexual assault causing substantial bodily harm. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. No direct appeal was taken.

On August 19, 1992, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Without appointing counsel or conducting an evidentiary hearing, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.¹

On December 1, 1993, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. The district court denied

¹Burdsal v. State, Docket No. 25000 (Order Dismissing Appeal, November 24, 1993).

appellant's motion, and this court dismissed appellant's subsequent appeal.²

On February 3, 1995, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court denied appellant's petition, and this court dismissed appellant's subsequent appeal.³

On July 28, 1999, appellant filed a third 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 untimely filed and successive. The State further pleaded laches pursuant to NRS 34.800(2). 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 29, 1999, the district court denied the petition. This appeal followed.

Appellant filed his petition more than eight years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had previously filed two post-conviction petitions.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶ Further, because the State specifically pleaded laches,

²Burdsal v. State, Docket No. 26205 (Order Dismissing Appeal, December 2, 1994).

³Burdsal v. State, Docket No. 27606 (Order Dismissing Appeal, July 21, 1998).

⁴See NRS 34.726(1).

⁵See NRS 34.810(2).

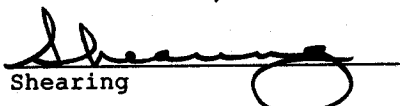
⁶See NRS 34.726(1); NRS 34.810(3).

appellant was required to overcome the presumption of prejudice to the State.⁷

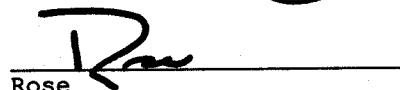
In an attempt to excuse his procedural defects, appellant argued that he lacked the assistance of counsel, legal expertise and access to legal materials during the prior post-conviction proceedings. Appellant further argued that he was filing the petition because he needed to exhaust State remedies. Appellant did not attempt to overcome the presumption of prejudice to the State. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate sufficient cause to excuse his procedural defects and failed to overcome the presumption of prejudice to the State.⁸

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Shearing J.



Rose J.



Becker J.

⁷See NRS 34.800(2).

⁸See Crump v. Warden, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); McKague v. Warden, 112 Nev. 159, 912 Nev. 255 (1996); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General
Clark County District Attorney
Thomas C. Burdsal, Jr.
Clark County Clerk