

IN THE SUPREME COURT OF THE STATE OF NEVADA

YUSUF SUPERMAN LUQMAN,

No. 35242

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

SEP 12 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
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 August 15, 1989, the district court convicted appellant, pursuant to a jury verdict, of possession of a controlled substance. The district court adjudged appellant a habitual criminal and sentenced him to serve a term of twenty years in the Nevada State Prison. This court dismissed appellant's direct appeal from his judgment of conviction.¹ The remittitur issued November 20, 1990.

On September 24, 1991, appellant filed a proper person petition for post-conviction relief pursuant to former NRS 177.315 in the district court. The State opposed the petition. On May 6, 1991, the district court denied appellant's petition. This court dismissed appellant's appeal from that order.²

On August 19, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the

¹Lugman v. State, Docket No. 20679 (Order Dismissing Appeal, October 29, 1990).

²Lugman v. State, Docket No. 23647 (Order Dismissing Appeal, March 19, 1993).

district court.³ The State opposed the petition on the grounds that it was procedurally time barred and successive. Further, 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 November 18, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition almost nine years after the remittitur issued from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁷ Appellant did not attempt to demonstrate good cause to excuse his procedural defects or overcome the presumption of prejudice to the State. Therefore, we conclude that the district court did not err in denying appellant's petition.

³Appellant titled his petition of August 19, 1999, "petitioner's petition for an extraordinary writ of habeas corpus ad-subjiciendum and nisi plea." In his petition appellant raised largely incomprehensible arguments challenging the validity of his conviction. Since appellant challenged his judgment of conviction, we conclude that the district court did not err in construing appellant's petition as a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(b).

⁴See NRS 34.726(1).

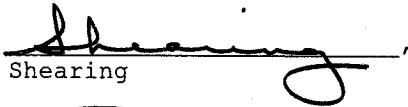
⁵See NRS 34.810(2).

⁶See NRS 34.726(1); NRS 34.810(3).

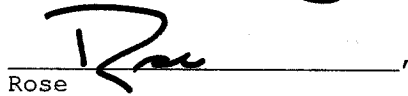
⁷See NRS 34.800(2).

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.



Rose J.



Becker J.

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Yusuf Superman Luqman
Clark County Clerk

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