

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS E. BARNES,

No. 35264

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

SEP 12 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. S. [Signature]*
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 23, 1990, the district court convicted appellant, pursuant to a jury verdict, of conspiracy to sell a controlled substance and trafficking in a controlled substance. The district court sentenced appellant to serve a term of three years in the Nevada State Prison on the conspiracy charge and a term of twenty-five years in the Nevada State Prison on the trafficking charge. The district court imposed the terms to run concurrently. This court dismissed appellant's direct appeal.¹ The remittitur issued on October 22, 1991.

On January 19, 1993, appellant filed a proper person petition for post-conviction relief pursuant to former NRS 177.315 in the district court. The State filed a motion to dismiss the petition. On February 19, 1993 the district court dismissed appellant's petition as untimely filed. This court

¹Barnes v. State, Docket No. 21566 (Order Dismissing Appeal, September 30, 1991).

dismissed appellant's appeal from that order for lack of jurisdiction, because the notice of appeal was untimely filed.²

On July 30, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition on the grounds that the petition was untimely, successive, and barred by laches. On November 23, 1999, the district court dismissed appellant's petition. This appeal followed.

Appellant's petition was filed more than seven 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 Therefore, 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 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.

²Barnes v. State, Docket No. 25741 (Order Dismissing Appeal, July 6, 1994).

³See NRS 34.726(1).

⁴See NRS 34.810(2).

⁵See NRS 34.726(1); NRS 34.810(3).


⁶See 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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


Shearing J.


Rose J.


Becker J.

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Thomas E. Barnes
Clark County Clerk

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).