

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT B. BUTLER,

No. 35304

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**JUL 13 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[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 July 1, 1980, the district court convicted appellant, pursuant to a jury verdict, of one count of lewdness with a minor (Count I), one count of the infamous crime against nature (Count II), and twenty counts of sexual assault (Counts III-XXII). The district court sentenced appellant to serve the following terms in the Nevada State Prison: for Count I, a term of ten years; for Counts II-XXII, twenty-one consecutive terms of life with the possibility of parole, to be served consecutively to Count I. Appellant appealed the judgment of conviction, and this court dismissed his appeal.<sup>1</sup> The remittitur issued on January 18, 1983.

Appellant filed a petition for a writ of habeas corpus in the First Judicial District Court claiming ineffective assistance of counsel, excessive sentence and

<sup>1</sup>Butler v. State, Docket No. 13151 (Order Dismissing Appeal, December 29, 1982).

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cumulative error. Appellant's petition was denied. This court dismissed appellant's appeal.<sup>2</sup>

Appellant then filed a petition for a writ of habeas corpus in federal district court. On November 21, 1991, the federal district court concluded that the writ would be granted unless appellant was resentenced because he received ineffective assistance of counsel at sentencing. The federal district court further dismissed one count as duplicative. On February 10, 1992, appellant was resentenced and received the following terms in the Nevada State Prison: for Count I, a term of five years, to be served concurrently to Count III; for Count II, one term of life with the possibility of parole, to be served consecutively to Count III; for Count III, one term of life with the possibility of parole; and for Counts IV-XVIII and XX-XXII, eighteen terms of life with the possibility of parole, each term to be served concurrently to Count III and to one another. The district court entered an amended judgment of conviction on February 18, 1992. This court dismissed appellant's untimely direct appeal for lack of jurisdiction.<sup>3</sup>

On January 5, 1993, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the Eighth Judicial District Court challenging the certification requirement of former NRS 200.375. On February 9, 1993,

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<sup>2</sup>Butler v. Warden, Docket No. 16863 (Order Dismissing Appeal, February 6, 1987).

<sup>3</sup>Butler v. State, Docket No. 24125 (Order Dismissing Appeal, April 2, 1993).

appellant's petition was transferred to the Seventh Judicial District Court. The Seventh Judicial District Court dismissed appellant's petition. This court dismissed appellant's subsequent appeal.<sup>4</sup>

On July 31, 1993, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the Eighth Judicial District Court. In his petition, appellant claimed that he was deprived of a direct appeal without his consent. On September 7, 1993, the State filed a motion to dismiss the petition. On September 28, 1993, the district court dismissed appellant's petition. On September 29, 1998, this court remanded the case to the district court to conduct an evidentiary hearing on appellant's appeal deprivation claim.<sup>5</sup> On January 21, 1999, the district court conducted an evidentiary hearing on appellant's appeal deprivation claim. On April 9, 1999, the district court denied appellant's claim. Appellant did not appeal that decision.

On November 7, 1994, appellant filed a proper person document labeled, "Motion for De Novo Trial and Writ of Coram Nobis" in the Eighth Judicial District Court. On December 22, 1994, the district court denied appellant's motion. Appellant did not appeal that decision.

On September 3, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in

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<sup>4</sup>Butler v. Warden, Docket No. 26528 (Order Dismissing Appeal, February 24, 1998).

<sup>5</sup>Butler v. State, Docket No. 26367 (Order of Remand, September 29, 1998).

the Eighth Judicial District Court challenging his conviction and sentence. The State opposed the petition and specifically 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 November 22, 1999, the district court denied appellant's petition. This appeal followed.

Appellant's petition was filed more than sixteen years after this court issued the remittitur from his direct appeal and more than seven years after entry of the amended judgment of conviction. Thus, appellant's petition was untimely filed.<sup>6</sup> Moreover, appellant's petition was successive because he had previously filed post-conviction petitions.<sup>7</sup> Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.<sup>8</sup>

In an attempt to excuse his procedural defects, appellant argued that he was ignorant of his right to appeal and that he received ineffective assistance of counsel at sentencing. Appellant also argued that he had new evidence demonstrating that the trial court judge was impaired at the time of trial. Based upon our review of the record on appeal, we conclude that the district court did not err in determining

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<sup>6</sup>See NRS 34.726(1).


<sup>7</sup>See NRS 34.810(1)(b)(2); NRS 34.810(2).

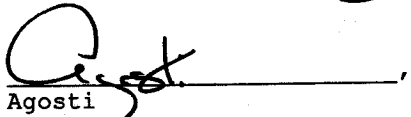
<sup>8</sup>See NRS 34.800(2).

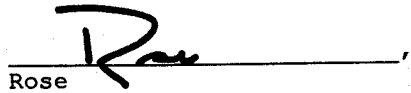
that appellant failed to excuse the procedural defects or overcome the presumption of prejudice to the State.<sup>9</sup>

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.<sup>10</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>11</sup>

  
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Shearing J.

  
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Agosti J.

  
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Rose J.

cc: Hon. Kathy A. Hardcastle, District Judge  
Attorney General  
Clark County District Attorney  
Robert B. Butler  
Clark County Clerk

<sup>9</sup>See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>10</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

<sup>11</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.