

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY CHARLES PETERSON,

No. 35345

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

AUG 08 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
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 March 20, 1989, the district court convicted appellant, pursuant to a guilty plea, of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's untimely appeals from his judgment of conviction and sentence for lack of jurisdiction. The remittiturs issued on April 21, 1992 and October 13, 1998.¹

On August 24, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the

¹Peterson v. State, Docket No. 23055 (Order Dismissing Appeal, March 30, 1992); Peterson v. State, Docket No. 32876 (Order Dismissing Appeal, September 21, 1998).

district court.² The State opposed the petition and 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 13, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than 10 years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁵ Appellant did not attempt to overcome these procedural defects. Therefore, we conclude that the district court did not err in denying appellant's petition.

²Appellant stated that his petition was filed pursuant to NRS 34.360. Because appellant challenged the validity of his conviction and sentence, we conclude that the district court properly construed appellant's petition to be a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(b).

³See NRS 34.726(1); see also Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998) (holding that the one-year period for filing a timely petition "begins to run from the issuance of the remittitur from a timely direct appeal to this court from the judgment of conviction or from the entry of the judgment of conviction if no direct appeal is taken").

⁴See NRS 34.726(1).

⁵See 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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷

Young, J.
Young

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Larry Charles Peterson
Clark County Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

⁷We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.