

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENJAMIN CHAVEZ,

No. 35347

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 November 22, 1991, the district court convicted appellant, pursuant to a guilty plea, of burglary. The district court adjudicated appellant a habitual criminal pursuant to NRS 207.010 and sentenced him to serve a term of 16 years in the Nevada State Prison. Appellant did not file a direct appeal.

In 1992, appellant filed a proper person petition for post-conviction relief pursuant to former NRS 177.315. The State opposed the petition. On May 7, 1993, the district court denied appellant's petition on the merits. This court subsequently dismissed appellant's appeal.¹

On September 2, 1999, appellant filed a 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 procedurally time barred and successive. The State also specifically pleaded laches. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint

¹Chavez v. State, Docket No. 25486 (Order Dismissing Appeal, March 27, 1997).

counsel to represent appellant or to conduct an evidentiary hearing. On December 8, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately eight years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Appellant's petition was also successive because he had previously filed a proper person petition for post-conviction relief pursuant to former NRS 177.315.³ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁴ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁵

In an attempt to excuse his procedural defects, appellant argued that the primary reason his petition was late was because of a lack of counsel and legal expertise, plus the inability to access legal materials. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Appellant failed to demonstrate sufficient cause to excuse the procedural bars and failed to overcome the presumption of prejudice to the State.⁶

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not

²See NRS 34.726(1).

³See NRS 34.810(2).

⁴See NRS 34.726(1); NRS 34.810(3).

⁵See NRS 34.800(2).

⁶See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

entitled to relief and that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸

Young, J.
Young

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General
Clark County District Attorney
Benjamin Chavez
Clark County Clerk

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

⁸We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.