

IN THE SUPREME COURT OF THE STATE OF NEVADA

NORMAN JOHN CREW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59455

NORMAN JOHN CREW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59879

FILED

APR 11 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying post-conviction petitions for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jerome T. Tao, Judge. We elect to consolidate these appeals for disposition. NRAP 3(b).

Docket No. 59455

Appellant filed his petition on June 2, 2011, almost twenty-six years after issuance of the remittitur on direct appeal on October 3, 1985. Crew v. State, 100 Nev. 38, 675 P.2d 986 (1984). Thus, appellant's

¹These appeals have been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the records are sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

petition was untimely filed.² See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See id.

Appellant claimed that he had good cause because he just learned of a potential claim of juror misconduct. Specifically, appellant claimed that he learned that two former jurors had opposing views about his release on parole. Appellant inquired further of his mother and was told that after trial a juror told his mother that the jurors compromised on reaching a verdict in his case—the jurors who were allegedly hesitant about finding guilt allegedly found appellant guilty with the agreement that the lightest penalty be imposed. Even assuming, without deciding, that an allegation of juror misconduct could serve as an explanation for delay in filing a petition when the facts supporting the allegation are newly discovered,³ appellant failed to demonstrate that he would be unduly prejudiced by the dismissal of his petition as procedurally barred because his claim of juror misconduct cannot be proven as it relates to the state of mind and mental processes of the jurors in reaching the verdict. See NRS 50.065(2)(a) (“A juror shall not testify concerning the effect of

²Even assuming that the deadline for filing a habeas corpus petition commenced on January 1, 1993, the date of the amendments to NRS chapter 34, appellant's petition was filed more than 18 years after the effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, §§ 5, 33, at 75-76, 92; Pellegrini v. State, 117 Nev. 860, 874-75, 34 P.3d 519, 529 (2001).

³Appellant's affidavit in support of his petition indicated that his mother learned of the alleged juror misconduct after trial, which calls into question whether this information could be considered newly discovered evidence. The e-mail correspondence from the Chairman of the Parole Board to appellant's mother did not in any way establish a claim of juror misconduct.

anything upon the juror's or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith."); Meyer v. State, 119 Nev. 554, 563, 80 P.3d 447, 454 (2003) (recognizing that an allegation of juror misconduct may be based upon extraneous influences but may not be based upon allegations involving the state of mind and mental processes of any juror). Because appellant failed to demonstrate good cause pursuant to NRS 34.726(1), the district court properly denied the petition as procedurally time-barred.

Docket No. 59879

In his petition filed on May 24, 2011, appellant claimed that the Parole Board violated various statutory provisions and his constitutional rights at the parole hearing conducted March 1, 2011. Appellant acknowledged that he was confined pursuant to a judgment of conviction. Because appellant was not challenging the validity of his judgment of conviction in the May 24, 2011, petition, his claim was not cognizable in a petition for a writ of habeas corpus. See NRS 34.360. Moreover, appellant had no right to be granted parole as parole is an act of grace and a prisoner has no right to serve less than the lawfully imposed sentence, and appellant failed to demonstrate that the decision to deny parole was arbitrary or capricious or a violation of any protected constitutional right. See NRS 213.10705 (providing that the establishment of parole standards does not create any right or interest in liberty or property or establish a basis for any cause of action against the State); NRS 213.1099(1) (providing that the decision to release on parole is discretionary); Weakland v. Bd. of Parole Comm'rs, 100 Nev. 218, 678 P.2d

1158 (1984) (recognizing that Nevada's statutory parole scheme did not create a constitutionally cognizable liberty interest). Accordingly, we

ORDER the judgments of the district court AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Jerome T. Tao, District Judge
Norman John Crew
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk