

IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY R. HINES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35049

FILED

DEC 14 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
CHIEF DEPUTY CLERK

TONY R. HINES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35448

ORDER OF AFFIRMANCE

Docket No. 35049 is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Docket No. 35448 is a proper person appeal from an order of the district court denying a motion to vacate judgment. We elect to consolidate these appeals for disposition.¹

On February 9, 1982, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree murder with the use of a deadly weapon and one count of attempted robbery with the use of a deadly weapon. The district court sentenced appellant to serve in the

¹See NRAP 3(b).

Nevada State Prison two consecutive terms of life without the possibility of parole for the murder count and two consecutive terms of seven and one-half years for the attempted robbery count. This court dismissed appellant's appeal from his judgment of conviction and sentence.² The remittitur issued on October 18, 1983.

On November 29, 1983, appellant filed a proper person petition for post-conviction relief pursuant to former NRS 177.315. The district court appointed counsel to represent appellant. Appellant's counsel informed the district court that appellant failed to discuss his claims with her. On April 19, 1984, the district court denied appellant's petition without prejudice.

On January 7, 1985, appellant filed a proper person petition for a writ of habeas corpus in the First Judicial District Court.³ Appellant's petition was transferred to the Eighth Judicial District Court.⁴ On April 3, 1989, the district court denied appellant's petition. Appellant did not appeal from the denial of his petition.

On August 22, 1995, appellant filed his second habeas corpus petition in the district court. The State filed a motion to dismiss the petition, arguing that the petition was successive and barred by laches.

²Hines v. State, Docket No. 14025 (Order Dismissing Appeal, September 27, 1983).

³We note that the petition is stamped January 7, 1984. The year in this date appears to be in error. Appellant's petition was verified, signed and notarized on December 13, 1984. Further, in his petition appellant referenced events in April 1984. Therefore, we conclude that the district court clerk made an error in stamping the petition and that the date was January 7, 1985.

⁴See 1987 Nev. Stat., ch. 539, § 40, at 1230.

On September 14, 1995, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.⁵

Docket No. 35049

On August 4, 1999, appellant filed a third proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 October 27, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately sixteen years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁶ Moreover, appellant's petition was successive because he had previously filed post-conviction petitions.⁷ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁸

In an attempt to excuse his procedural defects, appellant argued that he had received the ineffective assistance of post-conviction counsel in his 1983 petition for post-conviction relief and in his 1985 habeas corpus petition. Appellant argued that pursuant to Crump v. Warden he was entitled to raise his claims of ineffective assistance of post-conviction counsel in a successive petition.⁹ Finally, appellant argued that he was actually innocent.

⁵Hines v. State, Docket No. 27709 (Order Dismissing Appeal, April 16, 1999).

⁶See NRS 34.726(1).

⁷See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁸See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

⁹113 Nev. 293, 934 P.2d 247 (1997).

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate adequate cause to excuse his procedural defects.¹⁰ Even assuming that appellant had cause to file a successive petition raising claims of ineffective assistance of post-conviction counsel, appellant failed to demonstrate cause for the substantial delay in his petition. The district court properly concluded that appellant "had ample opportunity to litigate the issues of ineffective assistance of counsel in prior proceedings for post-conviction relief." Finally, appellant did not demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice.¹¹ Therefore, we affirm the order of the district court.

Docket No. 35448

On December 3, 1999, appellant filed a motion to vacate judgment pursuant to NRC 60(b) in the district court. The State opposed the motion. On December 21, 1999, the district court denied appellant's motion. This appeal followed.

In his motion appellant challenged the district court's October 27, 1999 findings of fact, conclusions of law and order denying his habeas corpus petition. Appellant argued that the district court erroneously applied procedural bars to his petition in the written order because he believed the district court had denied his claims on the merits during the hearing on his petition. Appellant requested that a new written order be entered.

"[T]he provisions of NRS 34.780 expressly limit the extent to which civil rules govern post-conviction habeas proceedings. We cannot

¹⁰See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

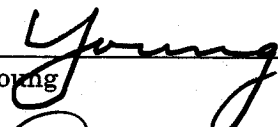
¹¹See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996) (stating that a petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice).

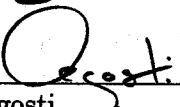
turn to the rules of civil procedure for guidance when NRS Chapter 34 has already addressed the matter at issue."¹² Because NRS Chapter 34 provides the manner in which a district court should decide a habeas corpus petition, and the manner in which an appeal should be pursued, there is no need to turn to the rules of civil procedure. Further, the district court's written order properly denied his petition for the reasons discussed above. Thus, we conclude that the district court did not err in denying appellant's request. Appellant had an adequate remedy by way of his appeal in Docket No. 35409. Therefore, we affirm the order of the district court.

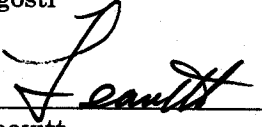
Conclusion

Having reviewed the records 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.¹³ Accordingly, we

ORDER the judgments of the district court AFFIRMED.¹⁴


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

¹²Mazzan v. State, 109 Nev. 1067, 1073, 863 P.2d 1035, 1038 (1993).

¹³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

¹⁴We have considered all proper person documents filed or received in these matters, and we conclude that the relief requested is not warranted.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General/Carson City
Clark County District Attorney
Tony R. Hines
Clark County Clerk