

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK MICHAEL GERNERT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 35459

FILED

JAN 16 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. K. [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 June 14, 1984, the district court convicted appellant, pursuant to an Alford¹ plea, of first-degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison without the possibility of parole. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction. *Gernert v. State*, Docket No. 33309 (Order Dismissing Appeal, November 30, 1998).

First, appellant filed a proper person petition for post-conviction relief in the district court. The State opposed the petition. The district court appointed counsel to represent appellant and conducted an evidentiary hearing. On November 26, 1986, the district court denied appellant's petition. This court dismissed appellant's appeal. *Gernert v. State*, Docket No. 17853 (Order Dismissing Appeal, September 23, 1987).

Next, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. The district court denied appellant's petition. Appellant did not appeal.

¹North Carolina v. Alford, 400 U.S. 25 (1970).

On August 2, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 10, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than fifteen years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a petition for post-conviction relief and a petition for habeas corpus relief. See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(3).

In an attempt to excuse his procedural defects, appellant argued that he was denied his right to a direct appeal. Appellant contended that he asked his attorney to file a direct appeal to challenge the sentence imposed but his attorney told him that he did not have a right to a direct appeal. Based upon our review of the record on appeal, we conclude the district court did not err in denying appellant's petition. See *Harris v. Warden*, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998) (holding that any "allegation that a claimant was deprived of a direct appeal without his or her consent, does not constitute good cause to excuse the untimely filing of a petition pursuant to NRS 34.726"); *Lozada v. State*, 110 Nev. 349, 358 n.5, 871 P.2d 944, 949 n.5 (1994) ("This opinion should not be read to excuse the untimely filing of a petition for post-conviction relief or post-conviction habeas relief simply on the allegation that a claimant was deprived of a direct appeal from a judgment of conviction without his consent"); see also *Roe v. Flores-Ortega*, 528 U.S. 470, ___, 120 S. Ct. 1029, 1036 (2000).

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. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976). Accordingly, we affirm the order of the district court.

It is so ORDERED.²

Young J.

Rose J.

Becker J.
Becker

cc: Hon. John P. Davis, District Judge
Attorney General
Mineral County District Attorney
Jack Michael Gernert
Mineral County Clerk

²We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.