

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT RICHARD CSECH,

No. 35689

Appellant,

vs.

WARDEN, NEVADA STATE PRISON, JOHN
IGNACIO,

Respondent.

FILED

OCT 11 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[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 and an order of the district court dismissing appellant's motion to recuse.

On August 16, 1996, the district court convicted appellant, pursuant to a no contest plea, of one count of lewdness with a child under the age of fourteen years (Count I) and one count of sexual assault (Count II). The district court sentenced appellant to serve a maximum term of one hundred and twenty months in the Nevada State Prison with a minimum parole eligibility of forty-eight months for Count I and a consecutive term of life in the Nevada State Prison with the possibility of parole for Count II. This court dismissed appellant's direct appeal pursuant to his motion and stipulation for voluntary dismissal. Csech v. State, Docket No. 29079 (Order Dismissing Appeal, November 14, 1996).

On July 31, 1997, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On November 21, 1997, the district court denied appellant's petition. Appellant filed an untimely notice of appeal from the district court's order, and this court dismissed appellant's appeal for lack of jurisdiction. Csech v. State, Docket No. 31644 (Order Dismissing Appeal, January 15, 1998).

On January 21, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus and a motion to recuse the district court judge 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 February 8, 2000, the district court denied appellant's petition and dismissed appellant's motion. This appeal followed.

Appellant's petition was untimely filed because it was filed more than three years after the time had passed for filing a timely petition pursuant to NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus. See NRS 34.810(2). Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(3). Appellant argued that his procedural defects should be excused because he was required to exhaust state remedies prior to pursuing relief in the federal courts. Appellant also argued that it suited the ends of justice to consider his petition because he received ineffective assistance of counsel in the prior proceedings and because of other alleged errors in the prior proceedings. We conclude that the district court did not err in determining that appellant failed to demonstrate adequate cause. See *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994); see also *Harris v. Warden*, 114 Nev. 956, 964 P.2d 785 (1998). Therefore, we conclude the district court did not err in denying his petition.

In dismissing his motion to recuse, the district court determined that it lacked jurisdiction to consider the motion because he had filed a notice of appeal from his judgment of conviction. The district court erred in concluding that it lacked jurisdiction; appellant filed his motion to recuse on the same day that he filed his habeas corpus petition and referenced the habeas corpus petition in his motion. See generally *Sheriff v. Hatch*, 100 Nev. 664, 666, 691 P.2d 449, 450 (1984) (recognizing that a petition for a writ of habeas corpus is an independent proceeding and separate from a direct appeal). Further, we note that appellant's direct appeal had been resolved

more than three years before the filing of the habeas corpus petition and the motion to recuse. Although the district court did not follow proper procedures in resolving appellant's motion, we nevertheless conclude that the district court reached the correct result in denying appellant's motion. See NRS 1.235; see also Libby v. State, 109 Nev. 905, 859 P.2d 1050 (1993). Appellant failed to allege sufficient facts to establish bias.

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 decisions of the district court.

It is so ORDERED.¹

Maupin, J.
Maupin

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. Janet J. Berry, District Judge
Attorney General
Washoe County District Attorney
Robert Richard Csech
Washoe County Clerk

¹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.