

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL TODD LOPEZ,

No. 35757

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

AUG 07 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus.

On December 9, 1982, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted robbery with the use of a deadly weapon and one count of burglary. The district court sentenced appellant to serve terms totaling ten years in the Nevada State Prison. Appellant did not file a direct appeal.

On May 24, 1999, appellant filed a proper person motion for post-conviction relief in the district court. The State opposed the motion. Appellant filed a reply. On October 12, 1999, the district court denied appellant's request for relief.

On January 3, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the

district court.¹ 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 March 8, 2000, the district court dismissed appellant's petition. This appeal followed.

Appellant completed serving his sentence in this case prior to filing his petition for post-conviction relief in the district court. Therefore, appellant was not in custody or otherwise restrained of his liberty at the time he filed his petition.² Moreover, appellant filed his petition more than eighteen years after entry of the judgment of conviction. Thus, appellant's petition was procedurally barred because it was filed without good cause for the delay.³ Finally, appellant's petition was successive because he had previously filed a proper person motion for post-conviction relief on the same grounds.⁴ Appellant failed to demonstrate sufficient cause and prejudice to excuse his procedural

¹Appellant labeled his petition "Petition for Post Conviction Relief, Pursuant to §§ 177.315 et seq." NRS 177.315 was repealed effective January 1, 1993. Thus, we conclude the district court did not err in construing appellant's petition as a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(b).

²See NRS 34.360; see also Jackson v. State, 115 Nev. 21, 973 P.2d 241 (1999).

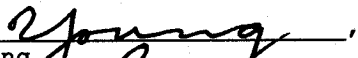
³See NRS 34.726(1).

⁴See NRS 34.810(2).

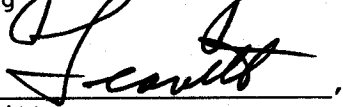
defects.⁵ We conclude that the district court did not err in dismissing appellant's petition.⁶

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Young J.



Leavitt J.



Becker J.

cc: Hon. David R. Gamble, District Judge
Attorney General
Douglas County District Attorney
Michael Todd Lopez
Douglas County Clerk

⁵See NRS 34.810(3).

⁶To the extent that appellant's petition could have been construed as a motion to withdraw his guilty plea, appellant's petition was properly denied because the equitable doctrine of laches would apply. See Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000).

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