

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN HIGH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 35858

FILED

AUG 08 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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 December 30, 1983, the district court convicted appellant, pursuant to a jury trial in district court case numbers C62503, C62508 and C62509, of one count of sexual assault with the use of a deadly weapon, five counts of burglary, six counts of robbery with the use of a deadly weapon, and one count of conspiracy to commit robbery. The district court sentenced appellant to serve two consecutive terms of life with the possibility of parole and fixed terms totaling one hundred and twenty-three years in the Nevada State Prison. This court dismissed appellant's direct appeal.¹ The remittitur issued on September 4, 1985.

On April 25, 1991, appellant filed a proper person petition for post-conviction relief in the district court pursuant to former NRS 177.315. The district court denied appellant's petition, and this court dismissed his subsequent appeal.²

¹High v. State, Docket No. 15612 (Order Dismissing Appeal, August 20, 1985).

²High v. State, Docket No. 22479 (Order Dismissing Appeal, September 30, 1991).

01-13411

On March 21, 1997, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court in each district court case. On April 16, 1997, appellant filed an amended petition for a writ of habeas corpus in the district court. The State opposed the petition, arguing that the petition was procedurally barred because it was untimely filed and successive. Further, the State specifically pleaded laches, claiming that appellant's delay created a rebuttable presumption of prejudice. 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 July 14, 1997, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.³

On December 13, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court designating each district court case.⁴ The State opposed the petition arguing that it was procedurally barred as untimely and successive. Moreover, the State specifically pleaded laches. Appellant filed a response. 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 19, 2000, the district court denied appellant's petition. This appeal followed.

³High v. State, Docket No. 30814 (Order Dismissing Appeal, May 10, 2000).

⁴Appellant labeled his petition, "third petition for writ of habeas corpus or alternatively writ of mandate." Because appellant challenged the validity of his conviction, sentence, and the computation of time served, we conclude that the district court properly construed appellant's petition to be a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2).

To the extent appellant challenged the validity of his conviction and sentence, appellant filed his petition more than fourteen years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁵ Moreover, appellant's petition was successive because he had previously filed post-conviction petitions.⁶ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁷ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁸

In an attempt to excuse his procedural defects, appellant argued he did not have trial transcripts at the time he filed his first petition, that he was a layman at law, that his trial and appellate counsel rendered ineffective assistance of counsel, and that he raised issues so novel that the issues were not reasonably available prior to his direct appeal or first petition. Appellant also argued that the procedural bars of NRS chapter 34 should not apply to him because his conviction was final before January 1, 1993.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining appellant failed to demonstrate sufficient cause to excuse his procedural defects and failed to overcome the presumption of prejudice to the State.⁹ Further, the procedural bars set

⁵See NRS 34.726(1).

⁶See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁷See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

⁸See NRS 34.800(2).

⁹See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988); see also Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

forth in NRS chapter 34 apply to all petitions filed after January 1, 1993.¹⁰ Therefore, we affirm the decision of the district court.

In his petition, appellant also raised a challenge to the computation of time served. Specifically, appellant argued that Nevada Dep't of Prisons v. Bowen, 103 Nev. 477, 745 P.2d 697 (1987) was applied detrimentally to his sentences.

NRS 34.738(1) provides that a petition challenging the computation of time served must be filed with the clerk of the district court for the county in which petitioner is incarcerated. Further, NRS 34.738(3) provides that a petition must not challenge both the validity of the judgment of conviction or sentence and the computation of time that the petitioner has served pursuant to the judgment. NRS 34.738(3) authorizes the district court to resolve that portion of the petition that challenges the validity of the judgment of conviction or sentence and to dismiss without prejudice that portion of the petition that challenges the computation of time served.

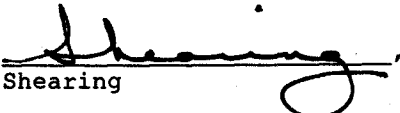
Appellant's petition, filed in the district court for the county in which he was convicted, improperly challenged both the validity of the judgment of conviction and the computation of time served. Although, the district court resolved appellant's entire habeas corpus petition without reference to that portion of the petition that challenged the computation of time served, we construe the decision of the district court as a denial without prejudice of that portion of the petition. Appellant's challenge to the computation of

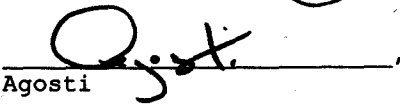
¹⁰See generally 1991 Nev. Stat., ch. 44, § 32, at 92.

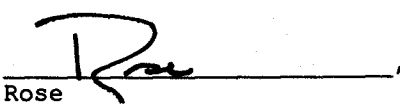
time served should be filed in the district court for the county in which appellant is incarcerated.

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.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹²


Shearing J.


Agosti J.


Rose J.

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General
Clark County District Attorney
Juan High
Clark County Clerk

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

¹²We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.