

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATILDE MARTINEZ-GONZALEZ,

No. 35938

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**DEC 18 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
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 November 1, 1995, the district court convicted appellant, pursuant to a guilty plea, of trafficking in a controlled substance - level II. The district court sentenced appellant to serve a term of 25 years in the Nevada State Prison with the possibility of parole after 10 years. This court dismissed appellant's appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on April 27, 1999.

On November 21, 1997, appellant filed a proper person post-conviction "motion to correct an illegal sentence pursuant to NRS 176.155 and/or in the alternative order for a writ of habeas corpus on the legality of imprisonment pursuant to NRS 34.360" in the district court. The district court treated appellant's motion as a post-conviction petition for a writ of habeas corpus. On March 17, 2000, the district court denied appellant's petition on the merits. Appellant did not appeal this district court order.

On March 22, 2000, 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 March 30, 2000 and April 27, 2000, the district court denied appellant's petition. This appeal followed.

<sup>1</sup>Martinez-Gonzales v. State, Docket No. 27807 (Order Dismissing Appeal, March 31, 1999).

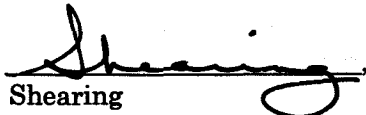
01-21267

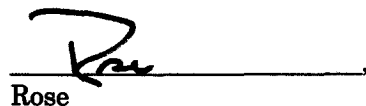
Appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus in the district court.<sup>2</sup> Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.<sup>3</sup>


Appellant appeared to have believed that his present petition was a supplement to his November 21, 1997 petition. However, the district court had entered a written order denying the petition prior to this supplement. Appellant further argued that his procedural defect should be excused because the Sixth Judicial District Court and the Nevada Supreme Court have not directly answered his claims. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Appellant failed to demonstrate good cause to excuse the procedural defects.

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.<sup>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

 J.  
Shearing

 J.  
Rose

 J.  
Becker

cc: Hon. Richard Wagner, District Judge  
Attorney General/Carson City  
Humboldt County District Attorney  
Matilde Martinez-Gonzalez  
Humboldt County Clerk

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<sup>2</sup>See NRS 34.810(2).

<sup>3</sup>See NRS 34.810(3).

<sup>4</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

<sup>5</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.