

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMION LAMONT JACKSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35948

FILED

DEC 05 2001

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

DAMION LAMONT JACKSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35949

ORDER OF AFFIRMANCE

Docket No. 35948 is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Docket No. 35949 is a proper person appeal from an order of the district court denying appellant's petition for a writ of mandamus. We elect to consolidate these appeals for disposition.¹

On March 28, 1996, the district court convicted appellant, pursuant to a guilty plea, of second degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. Appellant did not file a direct appeal.

¹See NRAP 3(b).

01-20406

On March 25, 1997, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 22, 1997, the district court denied appellant's petition. Appellant did not file an appeal.

Docket No. 35948

On January 11, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a reply. 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 27, 2000, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than three years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Moreover, appellant's petition was successive because he had previously filed a proper person post-conviction petition for a writ of habeas corpus.³ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁴

In an attempt to excuse his procedural defects, appellant argued that his petition was untimely because of his inability to comprehend the law, the court failed to produce records, and his attorney failed to send him his records. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate good cause to excuse the procedural bars.⁵ To the extent that appellant makes an actual

²See NRS 34.726(1).

³See NRS 34.810(2).

⁴See NRS 34.726(1); NRS 34.810(3).

⁵See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988); see also Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

claim of innocence because he believes that the second degree murder statute is unconstitutional, his claim is without merit; thus, he failed to demonstrate that failure to review his claims would result in a fundamental miscarriage of justice.⁶ We conclude that the district court did not err in denying appellant's petition.

Docket No. 35949

On March 3, 2000, appellant filed a proper person petition for a writ of mandamus in the district court. The district court denied the petition on August 2, 2000. This appeal followed.

In his petition, petitioner claimed that his due process and equal protection rights had been violated because the second degree murder statute is ambiguous and unconstitutional. Specifically, petitioner claimed that the statute is ambiguous because it states that second degree murder is "all other kinds of murder" and as written second degree murder can be construed as manslaughter, vehicular homicide, etc. He requested that the district court "properly charge him with any other murder, e.g. Manslaughter (voluntary or Involuntary)."

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion.⁷ A writ of mandamus will not issue, however, if petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.⁸ Further, mandamus is an extraordinary remedy, and it is within the discretion of the court whether a petition will be entertained.⁹ Our review of the record

⁶See Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996).

⁷See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

⁸See NRS 34.170.

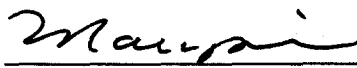
⁹See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); see also State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983).

on appeal reveals appellant had a plain, speedy, adequate remedy at law. Therefore, the district court did not abuse its discretion in denying appellant's petition for a writ of mandamus.


Conclusion

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.¹⁰ Accordingly, we

ORDER the judgments of the district court AFFIRMED.¹¹


_____, C.J.
Maupin


_____, J.
Shearing


_____, J.
Rose

cc: Hon. Kathy A. Hardcastle, District Judge
Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Damion Lamont Jackson
Clark County Clerk

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

¹¹We have considered all proper person documents filed or received in these matters, and we conclude that the relief requested is not warranted.