

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT JERROD MAYFIELD,

No. 36106

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JAN 22 2002

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CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

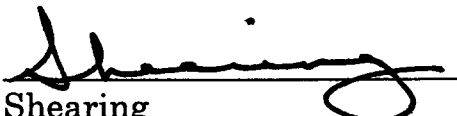
ORDER OF AFFIRMANCE

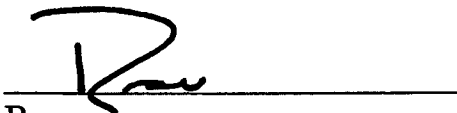
This is a proper person appeal from an order of the district court dismissing an untimely and successive post-conviction petition for a writ of habeas corpus.


We have reviewed the record on appeal and for the reasons stated in the attached order of the district court, conclude that the district

court properly denied appellant's petition. Therefore, briefing and oral argument are not warranted in this case.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing, J.


Rose, J.


Becker, J.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General/Carson City
Clark County District Attorney
Robert Jerrod Mayfield
Clark County Clerk

¹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

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Attorney for Plaintiff

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Sally Loehrer
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ROBERT JERROD MAYFIELD,
#1008638

Defendant.

Case No.. C96259
Dept. No. XV
Docket L

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: 4-5-00
TIME OF HEARING: 8:30 A.M.

THIS CAUSE having come on for hearing before the Honorable SALLY LOEHRER, District Judge, on the 5th day of April, 2000, the Petitioner not being present, in forma pauperis, the Respondent being represented by STEWART L. BELL, District Attorney, by and through ROBERT DASKAS, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On September 7, 1990 an information was filed that charged Robert Jerrod Mayfield ("Defendant") with one (1) count each of Robbery With Use of a Deadly Weapon and Murder With Use of a Deadly Weapon for the death of Winston Hemsley on or about May 9, 1989.
2. Defendant entered into a guilty plea agreement on January 8, 1991 to both counts of

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1 the information including the deadly weapon enhancements in exchange for a sentence of life
2 with the possibility of parole. On February 13, 1991, the District Court sentenced Defendant
3 to:

4 Count I (Robbery With Use of a Deadly Weapon) - nine (9) years in the Nevada State Prison,
5 plus a consecutive nine (9) years for the Use of a Deadly Weapon enhancement;
6 Count II (Murder With Use of a Deadly Weapon) - Life With the Possibility of Parole, plus a
7 consecutive Life With the Possibility of Parole for the Use of a Deadly Weapon enhancement
8 to run concurrently with Count I.

9 3. The District Court ordered that Defendant would be eligible for parole after twenty
10 (20) years has been served and that Defendant would receive two hundred ninety-five (295)
11 days credit for time served.

12 4. The Judgment of Conviction (Plea) was field on March 8, 1991.

13 5. Defendant filed his first Petition for Writ of Habeas Corpus (Post-Conviction) on
14 January 26, 1993.

15 6. The District Court denied Defendant's petition on June 22, 1993, but neglected to file
16 a timely Findings of Fact and Conclusions of Law.

17 7. After the State conceded in an Answer to Show Cause Order that Defendant's case
18 should be remanded, the District Court filed its Findings of Fact and Conclusions of Law on
19 November 27, 1995 ruling that Defendant's petition was not timely filed pursuant to NRS
20 34.726(1), that Defendant's counsel had made a tactical decision not to contest the deadly
21 weapon enhancements to avoid the possibility of Defendant facing the death penalty if
22 convicted and that Defendant waived any alleged error concerning the deadly weapon
23 enhancements by agreeing to the enhancements without asserting any objections. Defendant
24 appealed the denial of the petition, and on May 11, 1999, the Nevada Supreme Court issued
25 the remittitur dismissing Defendant's appeal.

26 8. Now, having been denied parole in November 1999, Defendant has filed a second
27 Petition for Writ of Habeas Corpus (Post-Conviction) on January 31, 2000 making essentially
28 the same allegations of ineffective assistance of counsel as he had done in his first petition

1 filed more than seven (7) years ago.

2 **CONCLUSIONS OF LAW**

3
4 1. Nevada Revised Statutes (NRS), 34.726(1) mandates that a post-conviction writ for
5 habeas corpus must be filed within one (1) year after the judgment of conviction if no direct
6 appeal is filed or within one (1) year after the State Supreme Court issues its remittitur on
7 direct appeal, unless good cause is shown for the delay.¹ See also, Moran v. McDaniel, 80
8 F.3d 1261 (9th Cir. 1996); Passanisi v. Director, Nevada Dept. Of Prisons, 105 Nev. 63, 769
9 P.2d 72 (1989). If the petition is not filed within one (1) year, and good cause for the delay is
10 not shown, the petition should be summarily dismissed. Id. In the present case, the judgment
11 of conviction from the guilty plea was filed on March 8, 1991. After filing various motions
12 with the District Court and Nevada Supreme Court, Defendant filed the instant petition on
13 January 31, 2000 more than five (5) years after the filing of the judgment of conviction.

14 2. Defendant has not shown good cause for the excessive delay in filing this petition. In
15 order to show good cause, a petitioner must show that the delay was not his fault. NRS
16 34.726(1)(a). The petitioner's limited mental ability and/or failure to know proper legal
17 procedures do not constitute good cause for delay. Moran v. McDaniel, supra. Despite a
18 previous trip to federal district court seeking relief, Defendant has failed to offer any
19 showing of good cause for the delay in filing this petition.

20 _____
¹NRS 34. 726(1) reads in pertinent part:

21 1. Unless there is good cause shown for the delay, a petition that challenges the validity
22 of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction
23 or, if an appeal has been taken from the judgment, within 1 year after the supreme court issues
24 its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner
25 demonstrates to the satisfaction of the court:

26 (a) That the delay is not the fault of the petitioner; and

27 (b) That the dismissal of the petition as untimely will unduly
28 prejudice the petitioner.

1 3. Additionally, the court will dismiss this petition because it has been filed in excess of
2 five (5) years. NRS 34.800 provides that a petition can be dismissed based on laches if the
3 State has been prejudiced.² A period of more than five (5) years from the date the judgment
4 of conviction is filed creates a presumption of prejudice. Because Defendant's judgment of
5 conviction was filed more than five (5) years ago, prejudice to the State must be presumed.
6 Therefore pursuant to NRS 34.800 and because the State is specifically pleading laches, the
7 Defendant's petition will be dismissed.

8 4. The instant petition is Defendant's second petition filed in this case. NRS 34.810³

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²NRS 34.800(2) reads in pertinent part:

11 2. A period exceeding 5 years between the filing of a judgment of conviction, an order imposing
12 a sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the
13 filing of a petition challenging the validity of a judgment of conviction creates a rebuttable
14 presumption of prejudice to the state. In a motion to dismiss the petition based on that prejudice,
15 the respondent of the State of Nevada must specifically plead laches.

16 ³NRS 34. 810 reads in pertinent part:

17 Additional reasons for dismissal of petition.

18 1. The court shall dismiss a petition if the court determines that:

19 (a) The petitioner's conviction was upon a plea of guilty or guilty
20 but mentally ill and the petition is not based upon an allegation that
21 the plea was involuntarily or unknowingly entered or that the plea
22 was entered without effective assistance of counsel.

23 (b) The petitioner's conviction was the result of a trial and the
24 grounds for the petition could have been:

25 (1) Presented to the trial court;

26 (2) Raised in a direct appeal or a prior petition for a writ of habeas
27 corpus or post-conviction relief; or

28 (3) Raised in any other proceeding that the petitioner has taken to

1 governs subsequent or successive petitions filed regarding the same case. NRS 34.726(1),
2 *supra*, places the burden of demonstrating good cause for presenting a claim that could have
3 been brought earlier squarely upon the petitioner. A petitioner must show (1) that good cause
4 exists for his failure to raise any grounds in an earlier petition and that he will suffer actual
5 prejudice if the grounds are not considered; or (2) if no new grounds are asserted, that the
6 previous petition was not decided on its merits. Phelps v. Director, 104 Nev. 656, 764 P.2d
7 1303 (1988); Brimage v. State, 94 Nev. 520, 592 P.2d 375 (1978); NRS 34.810.

8 5. In order to show good cause, a petitioner must show that the delay was not his fault.
9 Furthermore, “to establish good cause to excuse a procedural default, a defendant must
10 demonstrate that some impediment external to the defense prevented him from complying
11 with the procedural rule that has been violated.” Lozada v. State, 110 Nev. 349, 353, 871
12 P.2d 944 (1994). The Nevada Supreme Court has specifically held that a defendant’s limited
13 mental ability and/or failure to know proper legal procedures do not constitute good cause for
14

15 secure relief from his conviction and sentence, unless the court
16 finds both cause for the failure to present the grounds and actual
17 prejudice to the petitioner.

18 2. A second or successive petition must be dismissed if the judge or
19 justice determines that it fails to allege new or different grounds for
20 relief and that the prior determination was on the merits or, if new
21 and different grounds are alleged, the judge or justice finds that the
22 failure of the petitioner to assert those grounds in a prior petition
23 constituted an abuse of the writ.

24 3. Pursuant to subsections 1 and 2, the petitioner has the burden of
25 pleading and proving specific facts that demonstrate:

26 (a) Good cause for the petitioner's failure to present the claim or for
27 presenting the claim again; and

28 (b) Actual prejudice to the petitioner. (Emphasis added).

1 delay. Moran v. McDaniel, *supra*. Additionally, “[u]nlike initial petitions which certainly
2 require a careful review of the record, successive petitions may be dismissed solely on the
3 face of the petition.” Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123 (1995).

4 6. In the present case, Defendant has failed to demonstrate why he’s filing a second
5 petition that essentially makes the same allegations as his first petition. Defendant even
6 acknowledges that Grounds Three and Four are repetitious of his first petition. (Defendant’s
7 Petition, pp. 5-6). What Defendant overlooks in his argument is that the District Court did
8 address all of the claims that he raises in this petition when it issued its Findings of Fact and
9 Conclusions of Law filed on November 27, 1995. Moreover, the Nevada Supreme Court
10 affirmed the District Court’s ruling when it dismissed Defendant’s appeal. Thus,
11 Defendant’s second petition is purely successive and will be dismissed.

12 7. Defendant’s petition will also be dismissed because the claims are belied and repelled
13 by the record. Any allegation that the Defendant was not aware of the full consequences of
14 his plea agreement is belied and repelled by the record. “A defendant seeking post-
15 conviction relief is not entitled to an evidentiary hearing on factual allegations belied or
16 repelled by the record.” Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).
17 The canvass conducted by the District Court on January 8, 1991 directly contradicts any
18 claim by Defendant that his plea was somehow involuntarily made.

19 8. In the instant case, the Defendant, with the assistance of counsel, had entered into a
20 valid guilty plea agreement with the State and reported the same to the District Court during
21 the guilty plea canvass. On January 8, 1991, the following dialogue occurred:

22 THE COURT: It’s my understanding you want to
23 change your plea on this.

24 DEFENDANT: Yes, sir.

.....

25 THE COURT: Before I can accept it I have to be
26 assured it’s freely and voluntarily
given. Is it?

27 DEFENDANT: Yes, sir.

28 THE COURT: Have any threats been made against

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you or anyone closely associated with you to force you to plead guilty.

DEFENDANT: No, sir.

.....

THE COURT: Aside from these negotiations has anyone made any promises to you regarding the case to induce you to plead guilty?

DEFENDANT: No, sir.

THE COURT: Your attorney advised you of the elements of the crime with which you are charged?

DEFENDANT: Yeah. Yes, sir.

THE COURT: He told you it is the burden of the prosecution to prove your guilt beyond a reasonable doubt?

DEFENDANT: Yes, sir.

THE COURT: And he's told you of any available defenses you might have?

DEFENDANT: Yes, sir.

Thus, Defendant's allegations that his plea was the result of "being deceived and coerced by counsel" are disingenuous since he knowingly and voluntarily told the court that the plea was of his own volition. As such, the Defendant's claims are belied and repelled by the record and will be dismissed. Furthermore, a defendant will not be heard to repudiate statements he made on the record when he entered his plea. Lundy v. Warden, 89 Nev. 419, 514 P.2d 212 (1973).

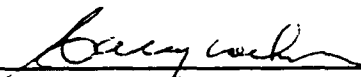

9. Defendant argues that defense counsel was ineffective for not challenging the deadly weapon enhancements and for a plethora of reasons that Defendant raised in his first petition Defendant now claims that the District Court failed to address all of these issues matters when it denied Defendant's petition without an evidentiary hearing, and that is why he has filed this second petition. However, Defendant ignores the fact that the District Court made specific Findings of Fact and Conclusions of Law that repudiate the instant petition. (See

1 Exhibit 1 Attached). Therefore, because the Court has already ruled on these issues,
2 according to the doctrine of the law of the case, this issue is precluded from revival in these
3 proceedings. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975). Accordingly, it should again
4 be summarily denied without the benefit of an evidentiary hearing.

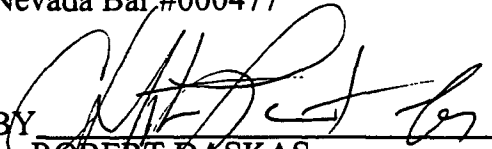
5 **ORDER**

6 Based on the foregoing argument, the Defendant's claims are without merit, and this
7 petition is DISMISSED.

8
9 DATED this 11 day of April, 2000.

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12 _____
DISTRICT JUDGE 

13 STEWART L. BELL
14 DISTRICT ATTORNEY
15 Nevada Bar #000477

16 BY 
17 _____
18 ROBERT DASKAS
19 Deputy District Attorney
20 Nevada Bar #004963
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