

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL D. JACOBS,

No. 36155

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**JUN 12 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 August 12, 1988, the district court convicted appellant, pursuant to a jury verdict, of one count of trafficking in a controlled substance. The district court sentenced appellant to serve a term of twenty years in the Nevada State Prison. This court dismissed appellant's direct appeal.<sup>1</sup> The remittitur issued on December 27, 1989.

On August 28, 1990, appellant filed a proper person petition for post-conviction relief in the district court. The State opposed the petition. On October 5, 1990, the district court denied appellant's petition. Appellant appealed, and this court remanded the matter to the district

<sup>1</sup>Jacobs v. State, Docket No. 19636 (Order Dismissing Appeal, December 6, 1989).

01-09774

court for an evidentiary hearing on appellant's claims.<sup>2</sup> The district court appointed counsel and conducted an evidentiary hearing. On January 27, 1993, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.<sup>3</sup>

On January 18, 1996, 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. On February 20, 1996, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.<sup>4</sup>

On January 25, 2000, appellant filed a proper person post-conviction 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. Moreover, the State specifically pleaded laches. On April 13, 2000, appellant filed a motion to strike the State's answer. 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 April 14, 2000, the district court denied appellant's petition, and on May 2, 2000, the district court denied

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<sup>2</sup>Jacobs v. State, Docket No. 22031 (Order of Remand, August 20, 1992).

<sup>3</sup>Jacobs v. State, Docket No. 24288 (Order Dismissing Appeal, December 1, 1994).

<sup>4</sup>Jacobs v. State, Docket No. 28338 (Order Dismissing Appeal, September 29, 1998).

appellant's motion to strike the answer. This appeal followed.<sup>5</sup>

Appellant filed his petition approximately ten years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>6</sup> Moreover, appellant's petition was successive because he had previously filed a petition for post-conviction relief and a petition for a writ of habeas corpus.<sup>7</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>8</sup> Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.<sup>9</sup>

In an attempt to excuse his procedural defects, appellant argued that he had received ineffective assistance of counsel in the prior proceedings and only recently learned of a problem with the reasonable doubt jury instruction. Appellant argued that failure to consider his claims would result in a fundamental miscarriage of justice.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying

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<sup>5</sup>To the extent appellant appeals from the decision of the district court to deny his motion to strike the State's answer, we conclude that the district court did not err.

<sup>6</sup>See NRS 34.726(1).

<sup>7</sup>See NRS 34.810(1)(b)(2); NRS 34.810(2).

<sup>8</sup>See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

<sup>9</sup>See NRS 34.800(2).

appellant's petition. Appellant failed to demonstrate adequate cause to excuse his procedural defects or overcome the presumption of prejudice to the State.<sup>10</sup> Appellant failed to demonstrate a fundamental miscarriage of justice would result from the district court's decision not to consider his petition on the merits.<sup>11</sup>

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>12</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young, J.  
Young

Leavitt, J.  
Leavitt

Becker, J.  
Becker

cc: Hon. Sally L. Loehrer, District Judge  
Attorney General  
Clark County District Attorney  
Michael D. Jacobs  
Clark County Clerk

<sup>10</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>11</sup>See Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996).

<sup>12</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).