

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES E. BARROWS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36181

FILED

FEB 14 2002

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 dismissing a post-conviction petition for a writ of habeas corpus.

On December 19, 1996, the district court convicted appellant, pursuant to a guilty plea, of sexual assault. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years had been served. This court dismissed appellant's untimely direct appeals for lack of jurisdiction.¹

On July 30, 1997, 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 several proper person supporting documents. The district court appointed counsel to represent appellant in the post-conviction proceedings and elected to conduct an evidentiary hearing. At the hearing, appellant's post-conviction counsel informed the district court that appellant wished to voluntarily withdraw his petition without prejudice. The district court informed appellant that he could not withdraw his petition without prejudice. The district court informed appellant that he could proceed with the evidentiary hearing and

¹See Barrows v. State, Docket Nos. 29941, 33306 (Orders Dismissing Appeals, March 14, 1997, February 3, 1999).

present his case to the court or not present his case to the court and be deemed to have presented a frivolous petition. Appellant conferred with his post-conviction counsel and refused to present his case.² The district court dismissed the petition with prejudice on the ground that appellant had submitted a frivolous petition. Appellant did not appeal the district court's decision.

On March 2, 2000, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. In his petition, appellant raised essentially the same claims that he had raised in his first petition. The State opposed the petition. The district court appointed counsel, and counsel filed a supplement to the petition raising a claim not previously raised. On May 9, 2000, the district court dismissed 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.³ Moreover, appellant's petition was successive because several of the claims had previously been raised in his first habeas corpus petition and one claim had not been raised previously.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

In an attempt to excuse his procedural defects, appellant argued the procedural bars should not apply because the federal court mandated that he return to state court in order to exhaust state remedies.

²This decision, it appears, was against the advice of counsel.

³See NRS 34.726(1).

⁴See NRS 34.810(2).


⁵See NRS 34.726(1); NRS 34.810(3).


Appellant further argued that he received ineffective assistance of counsel. Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition. Appellant failed to demonstrate adequate cause to excuse his procedural defects.⁶

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Archie E. Blake, District Judge
Attorney General/Carson City
Lyon County District Attorney
James E. Barrows
Lyon County Clerk

⁶See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).