

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. SCHJANG,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36396

FILED

OCT 31 2001

JANETTE M. BLOOM
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 denying appellant's post-conviction petition for a writ of habeas corpus.

On October 11, 1989, the district court convicted appellant, pursuant to a guilty plea, of one count each of first degree kidnapping with the use of a deadly weapon and sexual assault with the use of a deadly weapon. For each offense, the court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. The court ordered that the two life sentences for the sexual assault offense would begin to run after appellant had served the first life sentence for the kidnapping offense. Appellant did not file a direct appeal.

On September 26, 1990, appellant filed a proper person petition for post-conviction relief in the district court. The State opposed the petition. The district court declined to appoint counsel or hold an evidentiary hearing, and the court denied appellant's petition. This court ultimately dismissed the appeal from the district court's order.¹

On August 25, 1994, appellant filed a proper person "motion to vacate judgment of conviction and for remand to justice court on retroactive U.S. Supreme Court Decision *Powell v. Nevada*, 114 S.Ct. 1280 (1994)" in the district court. The State opposed the motion. The district

¹See *Schjang v. State*, Docket Nos. 28049, 30093 (Order Dismissing Appeals, April 18, 2000).

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court denied appellant's motion. This court dismissed appellant's subsequent appeal.²

On October 19, 1995, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court denied appellant's petition. Appellant filed a timely notice of appeal. On November 7, 1996, appellant filed another proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed appellant's petition. The district court denied appellant's petition. Appellant filed a timely notice of appeal. This court dismissed appellant's appeals from the district court orders denying his petitions.³

On March 27, 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 untimely filed and successive. Moreover, the State specifically pleaded laches. 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 June 14, 2000, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than ten years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had previously filed several post-conviction petitions and/or motions.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁷

In an attempt to excuse his procedural defects, appellant argued he received ineffective assistance of counsel during the plea

²Schjang v. State, Docket No. 26376 (Order Dismissing Appeal, December 2, 1994).

³Schjang v. State, Docket Nos. 28049, 30093 (Order Dismissing Appeals, April 18, 2000).

⁴See NRS 34.726(1).

⁵See NRS 34.810(2).


⁶See NRS 34.726(1); NRS 34.810(3).

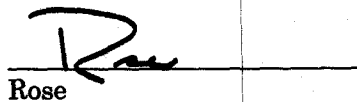
⁷See NRS 34.800(2).

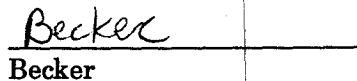
process. Specifically, appellant argued that he was not informed by his attorney or the district court that he would have to be certified by a psychiatric panel prior to becoming eligible for parole and that he only learned of this requirement in August of 1999. Appellant did not attempt to overcome the presumption of prejudice to the State. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to overcome the procedural defects or the presumption of prejudice to the State.⁸

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Michael A. Schjang
Clark County Clerk

⁸See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).