

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH HARTWELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

KENNETH HARTWELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

KENNETH HARTWELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 36402

**FILED**

FEB 14 2002

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

No. 36403

No. 36404

ORDER OF AFFIRMANCE

These are proper person appeals from an order of the district court denying appellant's post-conviction petitions for writs of habeas corpus. Appellant was originally convicted, pursuant to guilty pleas in three separate district court cases, of two counts of possession of stolen property, and one count of burglary. This court affirmed the judgments of conviction.<sup>1</sup> Remittitur issued on June 9, 1999.

On June 13, 2000, appellant filed proper person petitions for writs of habeas corpus in the three district court cases. The district court dismissed the petitions because they were filed more than one year after remittitur issued in appellant's direct appeals and appellant had failed to

<sup>1</sup>Hartwell v. State, Docket Nos. 30490, 30503, 30504 (Order Dismissing Appeals, May 13, 1999).

demonstrate good cause for the delay.<sup>2</sup> We conclude that appellant's petitions were indeed untimely, and the district court did not, therefore, err by dismissing them.

The district court's order dismissing the petitions also denied appellant's proper person motion to disqualify the district judge pursuant to NRS 1.230 and NRS 1.235. We conclude that the district court did not err in denying the motion.

Initially, we note that the motion and accompanying affidavit were not served on the district judge as required by NRS 1.235(4). Moreover, although NRS 1.235(5) requires the question of the judge's disqualification to be determined by another judge, there was no basis for disqualification and any error is therefore harmless.<sup>3</sup>

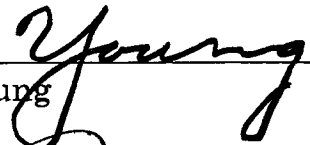
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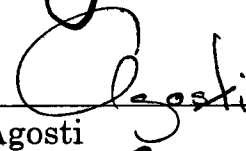
<sup>2</sup>See NRS 34.726(1).

<sup>3</sup>See Libby v. State, 109 Nev. 905, 911-12, 859 P.2d 1050, 1054-55 (1993) (holding that district court erred by failing to follow statutory procedure and have another judge decide whether disqualification was warranted, but that error was harmless because the allegedly biased comment underlying the disqualification motion was not a basis for the disqualification of a district judge), overruled on other grounds by Libby v. Nevada, 516 U.S. 1037 (1996).

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>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Brent T. Adams, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Kenneth Hartwell  
Washoe District Court Clerk

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<sup>4</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>5</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.