

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW F. ROWBOTTOM,

No. 36542

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

DEC 12 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus.

Appellant was initially convicted, pursuant to a jury verdict, of one count of first degree murder with the use of a deadly weapon, and sentenced to death. On appeal, this court reversed and remanded the case for a new trial.<sup>1</sup>

Appellant's second trial began on May 21, 1990. On May 30, 1990, pursuant to a plea bargain offered during the trial, appellant changed his plea to guilty of one count of first degree murder with the use of a deadly weapon. In exchange, the State agreed not to pursue the death penalty against appellant. The district court subsequently sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. The judgment of conviction was filed on

<sup>1</sup>Rowbottom v. State, 105 Nev. 472, 779 P.2d 934 (1989).

November 16, 1990. This court dismissed appellant's untimely direct appeal for lack of jurisdiction.<sup>2</sup>

On October 18, 1991, appellant filed a proper person petition for post-conviction relief pursuant to former NRS 177.315 in the district court. The district court appointed counsel. On January 8, 1993, after conducting an evidentiary hearing, the district court denied the petition. This court subsequently dismissed appellant's appeal from the order denying his petition.<sup>3</sup>

On December 11, 1996, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 January 7, 1997, the district court dismissed appellant's petition. This court subsequently dismissed appellant's appeal from the order denying his petition.<sup>4</sup>

On February 3, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. The State filed a motion to dismiss the petition, and appellant filed an opposition to the motion. On July 25, 2000, the district court denied appellant's petition. This appeal followed.

Based upon our review of the record on appeal, we conclude that the district court properly determined appellant's petition was

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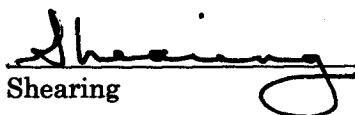
<sup>2</sup>Rowbottom v. State, Docket No. 31984 (Order Dismissing Appeal, March 25, 1998).

<sup>3</sup>Rowbottom v. State, Docket No. 24785 (Order Dismissing Appeal, May 7, 1996).

<sup>4</sup>Rowbottom v. State, Docket No. 29876 (Order Dismissing Appeal, May 27, 1999).

procedurally barred because it was successive, and he failed to demonstrate good cause to excuse his failure to comply with the procedural rules.<sup>5</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>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

  
Shearing J.

  
Rose J.

  
Becker J.

cc: Hon. Peter I. Breen, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Matthew F. Rowbottom  
Washoe County Clerk

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<sup>5</sup>See NRS 34.810(2); Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

<sup>6</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

<sup>7</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.