

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT LEE BUTLER,

Appellant,

vs.

RICHARD A. GAMMICK, WASHOE COUNTY
DISTRICT ATTORNEY,

Respondent.

No. 34713

FILED

JUL 31 2001

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

ROBERT LEE BUTLER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36543

ROBERT LEE BUTLER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36963

ORDER OF AFFIRMANCE

Docket No. 34713 is a proper person appeal from an order of the district court dismissing appellant's petition for a writ of mandamus. Docket No. 36543 is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Docket No. 36963 is a proper person appeal from an order of the

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district court denying a petition for a writ of certiorari. We elect to consolidate these appeals for disposition.¹

On September 13, 1995, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary. The district court sentenced appellant to serve a term of one to ten years in the Nevada State Prison. Appellant did not file a direct appeal.

On October 27, 1995, appellant filed a post-conviction petition for a writ of habeas corpus in the Second Judicial District Court. On December 6, 1995, the district court denied appellant's petition. Appellant's appeal from that decision was docketed in this court in Docket No. 27928. On July 3, 1996, appellant filed a second post-conviction petition for a writ of habeas corpus in the Sixth Judicial District Court. On August 13, 1996, the district court denied appellant's petition. Appellant's appeal from that decision was docketed in this court in Docket No. 29427. On April 16, 1997, appellant filed another post-conviction petition for a writ of habeas corpus in the Second Judicial District Court. On May 15, 1997, the district court denied the petition. Appellant's appeal from that decision was docketed in this court in Docket No. 30531. This court consolidated and dismissed the appeals.²

¹See NRAP 3(b).

²Butler v. State, Docket Nos. 27928, 29427, 30531 (Order Dismissing Appeals, March 10, 1999).

This court has also denied numerous proper person petitions filed in this court.³

Docket No. 34713

On April 19, 1999, appellant filed a proper person petition for a writ of mandamus in the district court. The State filed a motion to dismiss the petition. Appellant filed an objection to the State's motion to dismiss. The State filed a response, to which appellant filed a reply. On August 9, 1999, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant argued that the Washoe County District Attorney's office and the Attorney General's office failed to perform their duty of not discriminating on the basis of race when prosecuting criminal defendants. Specifically, appellant argued that it is the practice of the Washoe County District Attorney's office to charge black shoplifters with burglary and white shoplifters with the lesser offense of petty theft. Appellant believed that his 1995 burglary conviction was an example of the disparate racial treatment of shoplifters in Washoe County.

³Butler v. Parole Board, Docket No. 30179 (Order Denying Petition, May 22, 1997); Butler v. Second Judicial District Court, Docket No. 30615 (Order Denying Petition, October 30, 1997); Butler v. Second Judicial District Court, Docket No. 30617 (Order Denying Petition, October 30, 1997); Butler v. Second Judicial District Court, Docket No. 31249 (Order Denying Petition, December 24, 1997); Butler v. Washoe County District Attorney, Docket No. 31874 (Order Denying Petition, March 25, 1998); Butler v. Washoe County, Docket No. 32105 (Order Denying Petition, May 22, 1998); Butler v. Warden, Docket No. 32979 (Order Denying Petition, September 25, 1998); Butler v. Warden, Docket No. 35952 (Order Denying Petition, May 10, 2000); Butler v. Parole Board, Docket No. 35953 (Order Denying Petition, May 25, 2000); Butler v. Attorney General, Docket No. 36763 (Order Denying Petition, October 2, 2000).

The district court dismissed appellant's petition on the ground that the mandamus petition could not be used to set aside appellant's punishment for his crime or alter how his criminal case was charged prior to his conviction. Based upon our review of the record on appeal, we conclude that the district court did not abuse its discretion in dismissing appellant's petition.⁴ Appellant had an adequate legal remedy by way of a direct appeal or a post-conviction petition for a writ of habeas corpus.⁵ Moreover, appellant entered a guilty plea to the crime of burglary and thus waived any claims challenging alleged constitutional deprivations that occurred prior to entry of the plea.⁶ Therefore, we affirm the order of the district court.

Docket No. 36543

On July 25, 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. On July 28, 2000, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition almost five years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.⁷ Moreover, appellant's petition

⁴See NRS 34.160; 34.170.

⁵See NRS 177.015; 34.720.

⁶See Williams v. State, 103 Nev. 227, 737 P.2d 508 (1987); Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975).

⁷See NRS 34.726(1).

was successive because he had previously filed post-conviction petitions.⁸ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁹

Appellant argued that he had good cause to excuse his procedural defects because he only recently discovered that the district court did not have jurisdiction to convict him because the criminal information failed to state an offense for which he could be convicted. Specifically, appellant argued that the charge of burglary was unconstitutionally applied in this case because it punished his private thoughts when he entered a business opened to the public.

Appellant failed to demonstrate adequate cause to excuse the procedural defects.¹⁰ There is no indication that the district court was without jurisdiction to convict appellant. Appellant was charged with and entered a guilty plea to one count of burglary. Thus, we affirm the order of the district court denying appellant's petition.

Docket No. 36963

On August 18, 2000, appellant filed a proper person petition for a writ of certiorari in the district court. On October 3, 2000, the district court denied appellant's petition. This appeal followed.

In his petition for a writ of certiorari, appellant argued that a letter sent to him by the Attorney General's

⁸See NRS 34.810(2).

⁹See NRS 34.726(1); NRS 34.810(3).

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

office regarding the applicability of the burglary statute to his offense violated the Nevada and United States Constitutions.¹¹ Appellant argued that the opinion expressed in the letter punished his private "bad" thoughts when he entered a public building.¹²

A writ of certiorari will issue only in cases when an inferior tribunal, board or officer, exercising judicial functions, has exceeded its jurisdiction.¹³ Further, the existence of an adequate remedy at law is sufficient to preclude the issuance of an extraordinary writ.¹⁴

Based upon our review of the record on appeal, we conclude that the district court did not abuse its discretion in denying appellant's petition. The Attorney General's office is not an inferior tribunal, board or officer as contemplated in NRS 34.020(2). Further, the deputy attorney general was not exercising judicial functions when drafting the complained-of letter. Finally, appellant had an adequate remedy at law. A challenge to the validity of a conviction

¹¹The letter from the Attorney General's office seems to be in response to a letter sent by appellant challenging his burglary conviction.

¹²Specifically, appellant challenged the following passage of the letter:

I cannot fairly judge the merits, or lack thereof, of your position. I would note however, that intent to steal upon entry is often a distinguishing factor between those charged with burglary and those charged only with petty thievery. Perhaps the evidence in your case, coupled with your prior convictions for similar theft, merited the accusation that you intended to steal upon entry.

¹³NRS 34.020(2).

¹⁴Id.

and sentence is properly raised on appeal or in a post-conviction petition for a writ of habeas corpus filed with the district court.¹⁵ Thus, we affirm the order of the district order.

Conclusion

On October 2, 2000, this court denied a proper person petition for a writ of certiorari.¹⁶ In that order, this court cautioned appellant that continued frivolous filings may warrant a finding by this court that application of NRS 209.451 may be appropriate. We again caution appellant that continued frivolous filings may result in referral for the forfeiture of statutory good time credits.¹⁷

¹⁵NRS 177.015; NRS 34.720.

¹⁶Butler v. Nevada State Attorney General, Docket No. 36763 (Order Denying Petition, October 2, 2000).

¹⁷NRS 209.451(1) provides that if an offender:

(d) In a civil action, in state or federal court, is found by the court to have presented a pleading, written motion or other document in writing to the court which:

(1) Contains a claim or defense that is included for an improper purpose, including, without limitation, for the purpose of harassing his opponent, causing unnecessary delay in the litigation or increasing the cost of the litigation;

(2) Contains a claim, defense or other argument which is not warranted by existing law or by a reasonable argument for a change in existing law or a change in the interpretation of existing law; or

(3) Contains allegations or information presented as fact for which evidentiary support is not available or is not likely to be discovered after further investigation,

he forfeits all deductions of time earned by him before the commission of that offense or act, or forfeits such part of those deductions as the director considers just.

Having reviewed the records 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.¹⁸ Accordingly, we

ORDER the judgments of the district court AFFIRMED.¹⁹

Young, J.
Young

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. Steven P. Elliott, District Judge
Attorney General
Washoe County District Attorney
Robert Lee Butler
Washoe County Clerk

¹⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

¹⁹We have considered all proper person documents filed or received in these matters, and we conclude that the relief requested is not warranted.