

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL RONALD STENNER,

No. 36593

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

DEC 13 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 and petition for writ of correction.

On September 27, 1996, the district court convicted appellant, pursuant to a jury verdict, of two counts of sexual assault with the use of a deadly weapon (counts I and II) and one count of lewdness with a child under fourteen years of age (count III). The district court sentenced appellant to serve in the Nevada State Prison four consecutive terms of life with the possibility of parole for counts I and II and a consecutive term of two to six years for count III. This court dismissed appellant's untimely direct appeal for lack of jurisdiction.¹

Appellant filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent appellant and conducted an evidentiary

¹Stenner v. State, Docket No. 31905 (Order Dismissing Appeal, March 25, 1998).

hearing. On January 13, 2000, the district court denied the petition, and this court dismissed appellant's appeal.²

On June 27, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. In July 2000, appellant filed a document labeled, "ex parte ex rel petition for writ of correction." The State opposed the petitions. 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 August 2, 2000, the district court dismissed appellant's petitions. This appeal followed.

First, appellant filed his habeas corpus petition more than three and one-half years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Moreover, appellant's petition was successive because he had previously filed a habeas corpus petition.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 appeared to argue that he was filing a second petition because he believed his appellate counsel had mislead him about his appeal from the prior post-conviction petition in this case and a post-conviction petition in another district court case. Appellant also asserted that his petition was timely filed.

Based upon our review of the record on appeal, we conclude that appellant failed to overcome his procedural defects. This court has

²Stenner v. State, Docket No. 35483 (Order Dismissing Appeal, June 12, 2000).

³See NRS 34.726(1).

⁴See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁵See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

held that good cause must be an impediment external to the defense.⁶ Appellant did not have the right to counsel at the time he filed his first petition, and therefore he did not have the right to the effective assistance of counsel in that proceeding.⁷ "Hence, 'good cause' cannot be shown based on an ineffectiveness of post-conviction counsel claim."⁸ Further, appellant's petition was untimely filed, and appellant failed to offer any arguments to excuse his delay.⁹ Therefore, we conclude that the district court did not err in dismissing appellant's habeas corpus petition.

Next, in his petition for writ of correction, appellant challenged the adequacy of the remedy provided in Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994). Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition on the ground that a writ of correction is not among the writs allowed in Nevada.¹⁰ Moreover, appellant's challenge to the remedy provided for in Lozada was not ripe.¹¹ Appellant failed to demonstrate that he was deprived of a direct appeal in the earlier post-

⁶Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁷See McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996); see also Crump v. Warden, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997).

⁸McKague, 112 Nev. at 165, 912 P.2d at 258.

⁹See NRS 34.726(1); see also Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-1134 (1998) (holding that the one year period for filing a post-conviction habeas corpus petition begins to run from the issuance of the remittitur from a timely direct appeal or from the entry of the judgment of conviction if no direct appeal is taken)

¹⁰See Nevada Const. art. 6, § 6; NRS 34.724(2)(b).


¹¹See Boulet v. City of Las Vegas, 96 Nev. 611, 613, 614 P.2d 8, 9 (1980) ("This court shall not render opinions on moot or abstract questions. We will decide only actual controversies, in which the parties are adverse and the issues ripe.").

conviction proceedings. Thus, he may not challenge the adequacy of a remedy that he failed to demonstrate that he was entitled to receive.

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.¹² Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹³

 J.
Young

 J.
Agosti

 J.
Leavitt

cc: Hon. Steven P. Elliott, District Judge
Attorney General/Carson City
Washoe County District Attorney
Daniel Ronald Stenner
Washoe County Clerk

¹²See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

¹³We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.