

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALVIN D. BARNER,

No. 36597

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

OCT 08 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 March 6, 1986, the district court convicted appellant, pursuant to a jury verdict, of one count of sexual assault. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on July 14, 1987.

On October 7, 1987, appellant filed a petition for post-conviction relief pursuant to former NRS 177.315 in the district court. The district court denied the petition after an evidentiary hearing, and this court dismissed appellant's subsequent appeal.²

¹Barner v. State, Docket No. 17401 (Order Dismissing Appeal, June 25, 1987).

²Barner v. State, Docket No. 21829 (Order Dismissing Appeal, March 25, 1992).

On August 25, 1997, 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 procedurally barred. The State also specifically pleaded laches. Appellant filed two replies. 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 February 6, 1998, the district court dismissed appellant's petition. This court dismissed appellant's subsequent appeal.³

On June 8, 2000, appellant filed another 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 26, 2000, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately 13 years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had previously filed a petition for post-conviction relief pursuant to former NRS 177.315 and a post-conviction petition for a writ of habeas corpus.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Appellant raised incomprehensible arguments challenging his conviction

³Barner v. Warden, Docket No. 31877 (Order Dismissing Appeal, February 16, 2000).

⁴See NRS 34.726(1).

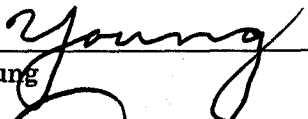
⁵See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁶See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

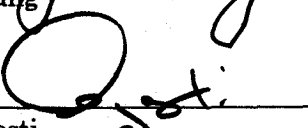
and incomprehensible reasons for the delay in filing his petition. Thus, appellant failed to demonstrate sufficient cause to excuse the procedural bars.⁷

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.⁸ Accordingly, we


ORDER the judgment of the district court AFFIRMED.⁹



Young J.



Agosti J.



Leavitt J.

cc: Hon. Charles M. McGee, District Judge
Attorney General/Carson City
Washoe County District Attorney
Alvin D. Barner
Washoe County Clerk

⁷See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

⁹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.