

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAMARR ROWELL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36601

FILED

APR 10 2001

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

LAMARR ROWELL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36658

LAMARR ROWELL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37023

ORDER OF AFFIRMANCE AND DISMISSING APPEAL

Docket No. 36601 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. 36658 is a proper person appeal from an order of the district court denying appellant's motion to submit affidavit #4 in support of petition for writ of habeas corpus. Docket No. 37023 is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. We elect to consolidate these appeals for disposition.¹

On September 16, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary. The district court sentenced appellant to serve a minimum term of forty-eight months to a maximum term of one hundred and twenty

¹NRAP 3(b).

months in the Nevada State Prison. The district court ordered the sentence to run consecutively to his sentences in district court case numbers C152233 and C149775. Appellant did not file a direct appeal.

Docket No. 36601

On June 9, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On July 7, 2000, appellant filed a motion to add second ground for habeas corpus relief. The State opposed the petition. 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 31, 2000, the district court orally denied appellant's petition and motion. On August 10, 2000, the district court entered a written order denying appellant's petition, and on August 14, 2000, the district court entered a written order denying appellant's motion. This appeal followed.

In his petition and motion, appellant contended that the burglary statute was unconstitutional and that his indictment was illegally obtained. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition and motion. Appellant's petition and motion raised claims outside the narrow scope of claims permissible in a petition challenging a conviction based upon a guilty plea.² Thus, we affirm the orders of the district court to deny appellant's petition and motion.³

²NRS 34.810(1)(a).

³On July 31, 2000, appellant filed a motion to add a third ground for habeas corpus relief and an answer to the State's opposition to appellant's petition. On August 10, 2000, the district court orally denied both appellant's motion and answer. On August 26, 2000, the district court entered a written order denying appellant's motion. To the extent appellant seeks to appeal from the district court's denial of his motion and answer, this court lacks jurisdiction to consider the appeal because no statute or court rule permits an appeal from an order of the district court denying a motion to add a ground to a habeas corpus petition or an answer to the State's opposition. See Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

Docket No. 36658

On August 7, 2000, appellant filed a motion to submit affidavit #4 in support of petition for writ of habeas corpus. Appellant sought to add claims of ineffective assistance of counsel to his petition. On August 26, 2000, the district court denied appellant's motion. This appeal followed.

Our review of this appeal reveals a jurisdictional defect. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.⁴ No statute or court rule provides for an appeal from an order of the district court denying a motion to submit affidavit #4 in support of habeas corpus petition. Because we lack jurisdiction, we dismiss this appeal.

Docket No. 37023

On August 24, 2000, appellant filed a second post-conviction petition for a writ of habeas corpus in the district court.⁵ Appellant filed several documents in support of his petition.⁶ The State opposed the petition. 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 November 16, 2000, the district court denied appellant's petition. This appeal followed.

Appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.⁷ Therefore, appellant's petition was procedurally barred

⁴Castillo, 106 Nev. 349, 792 P.2d 1133.

⁵Appellant labeled his petition, "petition for writ of habeas corpus: (post-conviction re-amended)."

⁶These documents include: (1) September 5, 2000 "affidavit in support of re-amended petition for writ of habeas corpus: (post-conviction)"; (2) September 7, 2000 "supplement to re-amended petition for writ of habeas corpus: (post-conviction)"; (3) September 12, 2000 "notice of two questions befor[e] the court and request for an answer:"; and (4) November 8, 2000 "answer to state's opposition to petition for writ of habeas corpus (post-conviction) (re-amended)."

⁷See NRS 34.810(2).

absent a demonstration of good cause and prejudice.⁸ Appellant did not attempt to demonstrate good cause to excuse the procedural defect. Thus, we affirm the order of the district court denying appellant's petition.

Conclusion

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.⁹ Accordingly, we

ORDER the judgments of the district court AFFIRMED in Docket Nos. 36601, 37023 and DISMISS the appeal in Docket No. 36658.¹⁰

Young J.
Young
Leavitt J.
Leavitt
Becker J.
Becker

cc: Hon. Lee A. Gates, District Judge
Hon. Mark W. Gibbons, District Judge
Attorney General
Clark County District Attorney
Lamarr Rowell
Clark County Clerk

⁸See NRS 34.810(3).

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

¹⁰We have considered all proper person documents filed or received in these matters, and we conclude that the relief requested is not warranted.