

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT L. WATKINS,

No. 36793

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

DEC 05 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
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 June 19, 1995, the district court convicted appellant, pursuant to a jury trial, of four counts of sexual assault with a minor under fourteen years of age. The district court sentenced appellant to serve three consecutive life sentences and one concurrent term of life in the Nevada State Prison. This court dismissed appellant's direct appeal.¹ The remittitur issued on April 15, 1997.

On May 22, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 August 15, 2000, appellant filed a supplemental petition. On September 27, 2000, the district court denied appellant's petition. This appeal followed.

¹Watkins v. State, Docket No. 27325 (Order Dismissing Appeal, March 27, 1997).

Appellant's petition was filed more than three years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³

In an attempt to demonstrate cause for the delay, appellant argued that his counsel was ineffective in failing to inform him that the district court lacked subject matter jurisdiction because (1) the State may only charge offenses upon indictment by the grand jury and (2) the information did not specify the time and place where each assault occurred. Appellant asserts that he can raise claims that the district court lacked subject matter jurisdiction at any time. Appellant also argued he was actually innocent.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition as procedurally barred. Appellant failed to demonstrate adequate cause to excuse his delay and undue prejudice.⁴ Furthermore, appellant failed to demonstrate a fundamental miscarriage of justice sufficient to overcome

²See NRS 34.726(1).

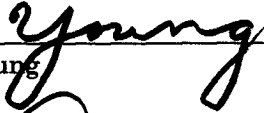
³See *id.*


⁴In Nevada, prosecution may be initiated by either the filing of a grand jury indictment or the filing of an information. See Nev. Const. art. 1, § 8; NRS 172.015; NRS 173.015; NRS 173.025; NRS 173.035. Appellant's prosecution was therefore properly initiated by the filing of an information. See *id.* Further, the information must contain sufficient facts to put appellant on notice of the offenses charged and theory of guilt. See NRS 173.075. In the instant case, the criminal information was sufficient in that it plainly stated that appellant committed four separate acts of "sexual intercourse" on a named victim and charged the acts as "sexual assault with a minor under fourteen years of age (Felony - NRS 200.364, 200.366)" occurring "on or between December, 1991, and September, 1994" "at and within the County of Clark, State of Nevada." See *id.*


the procedural bars because he failed to raise a credible claim of actual innocence.⁵

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Robert L. Watkins
Clark County Clerk

⁵See Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996).

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

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