

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY M. WHITTAKER, JR.,

No. 36817

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

SEP 28 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
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 29, 1994, the district court convicted appellant, pursuant to a guilty plea, of first degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison without the possibility of parole. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹ The remittitur issued on November 18, 1997.

On February 10, 1995 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 May 2, 1995, the district court dismissed appellant's petition. This court dismissed appellant's subsequent appeal.²

On April 24, 1997, appellant filed a proper person motion for sentence reduction in the district court. The district court denied the motion on May 12, 1997. Appellant did not file an appeal.

On November 18, 1997, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the

¹Whittaker v. State, Docket No. 30244 (Order Dismissing Appeal, October 27, 1997).

²Whittaker v. State, Docket No. 27170 (Order Dismissing Appeal, April 20, 1998)

motion. Appellant filed a reply. On February 9, 1998, the district court denied the motion. This court dismissed appellant's subsequent appeal.³

On June 28, 2000, 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 time barred and successive. The State also specifically pleaded laches. Appellant filed a reply. 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 September 26, 2000, the district court denied the petition. This appeal followed.

Appellant filed his petition more than 6 years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had previously filed a proper person 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 Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁷

In an attempt to excuse his procedural defects, appellant argued that the primary cause for the delay in filing his petition was that he lacked legal counsel, lacked legal expertise, had an inability to access legal material, and was illiterate and mentally incapacitated. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Appellant failed to demonstrate sufficient cause to excuse the procedural bars and failed to overcome the presumption of prejudice to the State.⁸

³Whittaker v. State, Docket No. 31997 (Order Dismissing Appeal, April 10, 1998).

⁴See NRS 34.726(1).

⁵See NRS 34.810(2).


⁶See NRS 34.726(1); NRS 34.810(3).

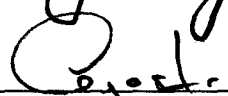
⁷See NRS 34.800(2).


⁸See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____. J.
Young


_____. J.
Agosti


_____. J.
Leavitt

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Larry M. Whittaker, Jr.
Clark County Clerk

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