

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT SCOTT HARAMI,

No. 36864

Appellant,

vs.

THE STATE OF NEVADA,

FILED

DEC 10 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

Respondent.

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 24, 1994, the district court convicted appellant Robert Scott Harami, pursuant to a guilty plea, of robbery. The district court sentenced Harami to serve a term of 12 years in the Nevada State Prison, to be served consecutively to the sentence in district court case C113705. Harami filed an untimely notice of appeal, which this court dismissed for lack of jurisdiction.¹

On June 1, 1995, Harami 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 Harami or to conduct an evidentiary hearing. On August 30, 1995, the district court denied the petition on the merits. This court affirmed the district court's decision on appeal.²

On March 23, 2000, Harami filed another proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, arguing that it was untimely and successive. Moreover, the State specifically pleaded laches. Pursuant to NRS 34.750

¹Harami v. State, Docket No. 27818 (Order Dismissing Appeal, February 22, 1996).

²Harami v. State, Docket No. 27662 (Order Dismissing Appeal, June 3, 1998).

01-20691

and 34.770, the district court declined to appoint counsel to represent Harami or to conduct an evidentiary hearing. On September 27, 2000, the district court denied Harami's petition. This appeal followed.

Harami filed his petition more than five years after entry of the judgment of conviction. Thus, the petition was untimely filed.³ Moreover, Harami's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.⁴ Harami's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ Further, because the State specifically pleaded laches, Harami was required to overcome the presumption of prejudice to the State.⁶

In an attempt to excuse his procedural defects, Harami argued that the district court had failed to provide him with necessary transcripts in connection with the first petition, that he was unable to comply with the procedural rules because he was transferred to a prison out of state and then, upon his return, his legal documents were lost or withheld by an inmate law clerk, and that he had newly discovered evidence to support his claims. Based upon our review of the record on appeal, we conclude that Harami failed to demonstrate cause to excuse his failure to comply with the procedural rules.

First, the record indicates that the necessary transcripts were available to and considered by the district court and this court in resolving Harami's first petition. Both courts concluded that the transcripts belied or repelled Harami's claims. Harami has not demonstrated that his alleged inability to obtain the transcripts prior to the district court's decision to deny the first petition constitutes good cause to excuse the filing of an untimely, successive petition.

³See NRS 34.726(1). The one-year period set forth in NRS 34.726(1) commences from the entry of a judgment of conviction or this court's issuance of remittitur from a timely direct appeal. See Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998). Thus, the remittitur issued in Harami's untimely direct appeal does not affect the one-year period set forth in NRS 34.726(1).

⁴See NRS 34.810(2).

⁵See NRS 34.726(1); NRS 34.810(3).

⁶See NRS 34.800(2).

Second, the alleged transfer and loss of Harami's legal documents occurred long after the district court denied the first petition. Harami has not demonstrated that the alleged transfer and loss of documents constituted good cause to excuse his filing of an untimely, successive petition.

Finally, the alleged piece of newly discovered evidence does not excuse the filing of an untimely, successive petition. The newly discovered evidence is a letter from Harami's brother indicating that trial counsel told him that Harami would receive a sentence of 10 years. Harami suggests that this letter supports his claims that he was misinformed regarding the plea negotiations and that the State breached the plea agreement. This evidence, provided by Harami's brother, clearly could have been discovered earlier. Moreover, it does not change the fact that Harami's claims are repelled by the record. We conclude that the letter does not constitute good cause to excuse the filing of an untimely, successive petition.

Harami also claimed that even if his petition was procedurally barred, the district court nevertheless should consider his claims because failure to do so would result in a fundamental miscarriage of justice. We disagree.

This court has recognized that even if a petitioner has procedurally defaulted and cannot demonstrate cause and prejudice, judicial review of the petitioner's claims would nevertheless be required if the petitioner demonstrates that failure to consider them would result in a "fundamental miscarriage of justice."⁷ A "fundamental miscarriage of justice" typically involves a claim that a constitutional error has resulted in the conviction of someone who is actually innocent.⁸

Harami pleaded guilty to robbery. During the plea canvass, Harami acknowledged that by pleading guilty, he was admitting the facts supporting the charge. Harami also acknowledged the facts that the State would prove if the case went to trial. Harami has not made any allegations that support a credible claim of actual innocence. Accordingly,

⁷Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

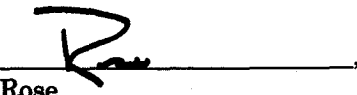
⁸See Coleman v. Thompson, 501 U.S. 722, 748-50 (1991); Murray v. Carrier, 477 U.S. 478, 496 (1986).

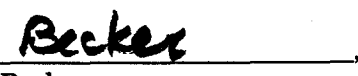
we conclude that Harami failed to demonstrate that the failure to consider the merits of his claims would result in a fundamental miscarriage of justice. Based on our review of the record, we also conclude that Harami failed to overcome the presumption of prejudice to the State.

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.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General/Carson City
Clark County District Attorney
Robert Scott Harami
Clark County Clerk

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).