

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY PRICE,

No. 37163

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

SEP 28 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
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 October 5, 1992, the district court convicted appellant, pursuant to a guilty plea, of lewdness with a minor. The district court sentenced appellant to serve a term of ten years in the Nevada State Prison to be served consecutively to another district court case. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction. The remittitur issued on July 21, 1998.<sup>1</sup>

On July 30, 1993, appellant filed a proper person post-conviction motion to withdraw a guilty plea in the district court. The State opposed the motion. On October 14, 1993, the district court denied appellant's motion. Appellant did not appeal this decision.

On June 23, 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 not verified and it was procedurally time barred. The State also specifically pleaded laches. 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

<sup>1</sup>Price v. State, Docket No. 32507 (Order Dismissing Appeal, July 2, 1998).

September 15, 2000, the district court denied appellant's petition. Appellant did not appeal this decision.

On September 13, 2000, appellant filed a second 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. 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 December 11, 2000, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately eight years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.<sup>2</sup> Appellant's petition was successive because he had previously filed a proper person petition for a writ of habeas corpus.<sup>3</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>4</sup> Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.<sup>5</sup>

In an attempt to excuse his procedural defects, appellant argued that he only recently discovered constitutional violations. He claimed that he was denied the effective assistance of counsel and due process of law. 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.<sup>6</sup>

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<sup>2</sup>See NRS 34.726(1).

<sup>3</sup>See NRS 34.810(2).

<sup>4</sup>See NRS 34.726(1); NRS 34.810(3).

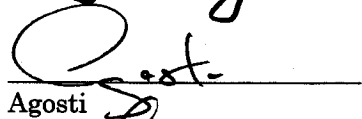
<sup>5</sup>See NRS 34.800(2).

<sup>6</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

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.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Young

 J.  
Agosti

 J.  
Leavitt

cc: Hon. Sally L. Loehrer, District Judge  
Attorney General  
Clark County District Attorney  
Anthony Price  
Clark County Clerk

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<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).