

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL EDWARD GRAVELY,

No. 37190

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

SEP 20 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
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 2, 1983, the district court convicted appellant, pursuant to a jury verdict, of one count of murder with the use of a deadly weapon, one count of battery with the use of a deadly weapon, and one count of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole and consecutive terms totaling 50 years. This court dismissed appellant's appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on January 29, 1985.

On January 8, 1998, 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 appellant's petition 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>Gravelly v. State, Docket No. 15131 (Order Dismissing Appeal, January 9, 1985).

March 25, 1998, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.<sup>2</sup>

On August 23, 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 appellant's 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 December 8, 2000, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than 15 years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>3</sup> Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.<sup>4</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>5</sup> Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.<sup>6</sup>

In an attempt to excuse his procedural defects, appellant argued that his attorney never informed him of his appeal rights beyond a direct appeal, his counsel lost or misplaced his records, appellant had a mental breakdown and a stroke, and he was a layman at law. Based upon our review of the record on appeal, we conclude that appellant has failed

---

<sup>2</sup>Gravely v. State, Docket No. 32219 (Order Dismissing Appeal, April 18, 2000).

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

<sup>4</sup>See NRS 34.810(1)(b)(2); NRS 34.810(2).


<sup>5</sup>See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

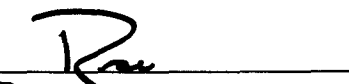
<sup>6</sup>See NRS 34.800(2).

to demonstrate good cause to excuse the procedural time bars and has failed to overcome the presumption of prejudice to the State.<sup>7</sup>

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>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Shearing

 J.  
Rose

 J.  
Becker

cc: Hon. Kathy A. Hardcastle, District Judge  
Attorney General  
Clark County District Attorney  
Michael Edward Gravely  
Clark County Clerk

---

<sup>7</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

<sup>8</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).