

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN HART A/K/A IRWIN J. BEASLEY,

No. 37192

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

SEP 12 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 April 14, 1994, the district court convicted appellant, pursuant to a jury verdict, of two counts of assault with the use of a deadly weapon (counts I and II), and one count of robbery with the use of a deadly weapon (count III). The district court sentenced appellant to serve two concurrent terms of 6 years for counts I and II, and two consecutive terms of 12 years for count III in the Nevada State Prison. The district court ordered count III to be served concurrently to count II. Appellant did not file a direct appeal.

On August 31, 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 appellant's petition was procedurally time barred and that it did not substantially comply with NRS 34.735. Moreover, the State specifically pleaded laches. Appellant filed a reply to the State's opposition. Pursuant to NRS 34.750 and 34.770,

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the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On December 7, 2000, the district court denied appellant's 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.¹ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.² Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.³

In an attempt to excuse his procedural defects, appellant argued that he filed an untimely petition because the relevant issues forming the basis of his petition were just recently ruled on by the United States Supreme Court. Appellant further argued that there is no prejudice to the State for the 6 year delay in filing his petition because the only issue involved in his petition is whether his sentence was imposed in violation of due process. We conclude that the district court did not err in denying appellant's petition. Appellant failed to demonstrate sufficient cause to excuse the procedural time bar and failed to overcome the presumption of prejudice to the State.⁴

¹See NRS 34.726(1).

²See NRS 34.726(1); NRS 34.810(1)(b).

³See NRS 34.800(2).

⁴See 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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


Shearing, J.


Rose, J.


Becker, J.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Brian Hart
Clark County Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

⁶We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.