

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY L. FOOTE,

No. 37354

Appellant,

vs.

FILED

NOV 16 2001

THE STATE OF NEVADA,

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
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 March 8, 1988, the district court convicted appellant, pursuant to a jury verdict, of battery with the intent to commit a crime (count I), sexual assault (count II), and sexual assault with the use of a deadly weapon (count III). The district court sentenced appellant to serve the following terms in the Nevada State Prison: for count I, ten years; for count II, a term of life to be served concurrently to count I; for count III, two consecutive terms of life to be served consecutively to counts I and II. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on February 22, 1989.

On January 29, 1990, appellant filed a proper person petition for post-conviction relief pursuant to former NRS 177.315. The State opposed the petition. On March 23, 1990, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.²

On May 1, 1995, appellant filed a second proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. The district court denied appellant's petition. On October 28, 1996, appellant filed a proper person motion to vacate judgment. The

¹Foote v. State, Docket No. 19124 (Order Dismissing Appeal, January 31, 1989).

²Foote v. State, Docket No. 21294 (Order Dismissing Appeal, October 29, 1990).

State opposed the motion. The district court denied appellant's motion. This court consolidated appellant's appeals from these denials and subsequently dismissed both appeals.³

On May 23, 2000, appellant filed a proper person motion to vacate judgment and illegal sentence. The State opposed the motion. The district court denied the motion. This court dismissed appellant's appeal from this denial.⁴

On December 15, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 11, 2000, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than eleven years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁵ Moreover, appellant's petition was successive because he had previously filed a proper person petition for post-conviction relief pursuant to former NRS 177.315 and a proper person post-conviction petition for a writ of habeas corpus.⁶ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁷

In an attempt to excuse his procedural defects, appellant argued that he filed his petition in an untimely manner because he has been litigating a petition for a writ of habeas corpus in federal court, and because his appellate counsel was ineffective. Based upon our review of the record on appeal, we conclude that the district court did not err in

³Foote v. State, Docket Nos. 27442, 29606 (Order Dismissing Appeals, June 3, 1998).

⁴Foote v. State, Docket No. 36479 (Order Dismissing Appeal, August 16, 2000).

⁵See NRS 34.726(1).

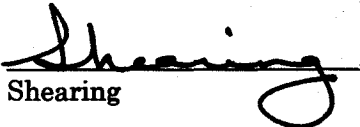
⁶See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁷See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

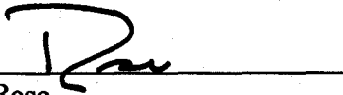
denying appellant's petition. Appellant failed to demonstrate good cause to overcome the procedural bars.⁸

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.



Shearing J.



Rose J.



Becker J.

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Ricky L. Foote
Clark County Clerk

⁸See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

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