

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT C. JONES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37388

FILED

NOV 21 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ROBERT C. JONES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37448

ORDER OF AFFIRMANCE

Docket No. 37388 is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Docket No. 37448 is a proper person appeal from an order of the district court denying appellant's motion to withdraw guilty plea. We elect to consolidate these appeals for disposition.¹

On July 9, 1980, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree murder. The district court sentenced appellant to death. This court affirmed appellant's judgment of conviction, vacated his sentence of death, and

¹See NRAP 3(b).

remanded the case to the district court for a new penalty hearing.² The remittitur issued on November 5, 1985. On remand, appellant stipulated to a term of life in the Nevada State Prison without the possibility of parole.³

On April 14, 1988, appellant filed a proper person petition for post conviction relief pursuant to former NRS 177.315 in the district court. On May 25, 1988, the district court denied appellant's petition. Appellant did not appeal this denial.

Docket No. 37388

On November 28, 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. 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 January 11, 2001, 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.⁴ Appellant's petition was also successive because he had previously filed a proper person petition for post conviction relief pursuant to former NRS 177.315.⁵ Appellant's petition was procedurally

²Jones v. State, 101 Nev. 573, 707 P.2d 1128 (1985).

³On April 10, 1987, an amended judgment of conviction was entered to reflect appellant's amended sentence of life without the possibility of parole.

⁴See NRS 34.726(1).

⁵See NRS 34.810(1)(b)(2); NRS 34.810(2).

barred absent a demonstration of good cause and prejudice.⁶ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁷

In an attempt to excuse his procedural defects, appellant claimed that during his conviction he was unable to read or write and therefore had to rely on jailhouse lawyers for his legal knowledge. Appellant also claimed that his appellate counsel, on direct appeal, failed to raise a claim that there was insufficient evidence to convict appellant and that appellant's conviction was based upon the knowing use of perjured evidence. He claimed that his appellate counsel's actions prevented him from complying with any procedural rules. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate good cause to excuse the procedural bars and failed to overcome the presumption of prejudice to the State.⁸ To the extent that appellant is making a claim of actual innocence, he failed to make a credible claim of actual innocence; thus he failed to demonstrate that failure to consider this claim would result in a fundamental miscarriage of justice.⁹ Moreover, in dismissing appellant's direct appeal, this court stated that there was overwhelming evidence of appellant's guilt.¹⁰

Docket No. 37448

On January 30, 2001, appellant filed a proper person motion to withdraw guilty plea in the district court. The State opposed the motion arguing that appellant's motion was moot because he was

⁶See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

⁷See NRS 34.800(2).

⁸See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988); see also Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994);

⁹See Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996).

¹⁰Jones, 101 Nev. at 578, 707 P.2d at 1131.


convicted by a jury and did not enter a guilty plea. On February 20, 2001, the district court denied appellant's motion.

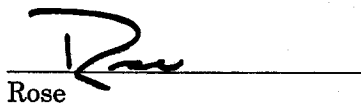
We conclude that the district court did not err in denying appellant's motion. To the extent that appellant's motion to withdraw a guilty plea challenges his sentence, this claim is outside the scope of claims cognizable in a motion to withdraw a guilty plea.¹¹ Even assuming that this court construes appellant's motion as a post-conviction petition for a writ of habeas corpus, the petition is procedurally barred.¹²

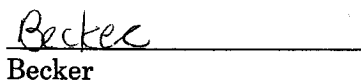
CONCLUSION

Having reviewed the records 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.¹³ Accordingly, we

ORDER the judgments of the district court AFFIRMED.¹⁴

 J.
Shearing

 J.
Rose

 J.
Becker

¹¹See Hart v. State, 116 Nev. 558, 564, 1 P.3d 969, 973 (2000).

¹²See NRS 34.724(2); NRS 34.726(1); NRS 34.800(1)(b); NRS 34.810(2).

¹³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

¹⁴We have considered all proper person documents filed or received in these matters, and we conclude that the relief requested is not warranted.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General/Carson City
Clark County District Attorney
Robert C. Jones
Clark County Clerk