

IN THE SUPREME COURT OF THE STATE OF NEVADA

WALTER D. MORGAN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37645

FILED

JAN 02 2002

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 July 21, 1989, the district court convicted appellant, pursuant to a jury verdict, of first-degree 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. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on January 8, 1991.

On December 24, 1991, appellant filed a petition for post-conviction relief pursuant to former NRS 177.315. The district court denied the petition in part, but vacated the deadly weapon enhancement portion of the conviction. This court dismissed appellant's subsequent appeal.² On October 3, 1994, the district court entered an amended judgment of conviction vacating the deadly weapon enhancement.

On November 4, 1996, appellant filed a post-conviction petition for a writ of habeas corpus. The district court dismissed appellant's the petition, and this court dismissed the subsequent appeal.³

¹Morgan v. State, Docket No. 20454 (Order Dismissing Appeal, December 20, 1990).

²Morgan v. State, Docket No. 23872 (Order Dismissing Appeal, March 31, 1994).

³Morgan v. State, Docket No. 30108 (Order Dismissing Appeal, August 11, 1999).

On December 14, 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 time-barred and successive. Moreover, the State 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 April 6, 2001, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than eight years after this court issued the remittitur from his direct appeal and more than six years after entry of the amended judgment of conviction. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had previously filed two petitions for post-conviction relief.⁵ Appellant's petition was procedurally 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 argued that he did not learn that two of his trial attorneys later became prosecutors until late 2000. In Lozada v. State, this court stated that in order "[t]o establish good cause to excuse a procedural default, a defendant must demonstrate that some impediment external to the defense prevented him from complying with the procedural rule that has been violated."⁸ Appellant has failed to meet this burden; he did not show that an external impediment prevented him from filing a timely petition or prevented him from raising his claims in a prior petition. Moreover, appellant asserted various challenges to the conditions of his confinement. These claims fall outside the scope of habeas relief. "[A] petition for a writ of habeas corpus may challenge the validity of current confinement, but

⁴See NRS 34.726(1).

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

⁶See NRS 34.726(1); NRS 34.810(3).

⁷See NRS 34.800(2).

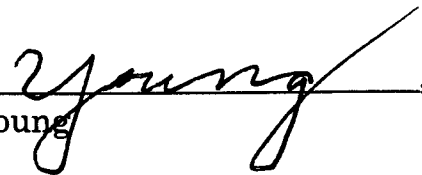
⁸Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).

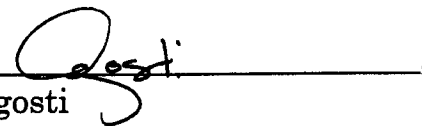
not the conditions thereof.”⁹ Therefore, the district court properly denied appellant’s petition.

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹¹


_____, C.J.
Maupin


_____, J.
Young


_____, J.
Agosti

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General/Carson City
Clark County District Attorney
Walter D. Morgan
Clark County Clerk

⁹Bowen v. Warden, 100 Nev. 489, 490, 686 P.2d 250, 250 (1984).

¹⁰See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

¹¹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.