

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAMARR ROWELL,

No. 37749

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

DEC 12 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
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 September 16, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary. The district court sentenced appellant to serve a minimum term of forty-eight months to a maximum term of one hundred and twenty months in the Nevada State Prison. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹

On June 9, 2000, appellant filed his first proper person post-conviction petition for a writ of habeas corpus, and on July 7, 2000, appellant filed a motion to add a second ground. On August 10, 2000, and on August 14, 2000, the district court denied appellant's petition and motion. Appellant filed an appeal that was docketed in this court in Docket No. 36601. On August 24, 2000, appellant filed a second post-conviction petition for a writ of habeas corpus in the district court. On November 16, 2000, the district court denied appellant's petition. Appellant filed an appeal that was docketed in this court in Docket No.

On February 7, 2001, appellant filed a third proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 September 6, 2001, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than one and one-half years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Moreover, appellant's petition was successive because he had previously filed two post-conviction habeas corpus petitions.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵


In an attempt to excuse his procedural defects, appellant argued that the district court misunderstood his first claim of ineffective assistance of counsel raised in his second habeas corpus petition. Appellant also appeared to argue that he was actually innocent.


Based upon our review of the record on appeal, we conclude that the district court did not err in concluding that appellant failed to demonstrate adequate cause to excuse the procedural defects.⁶ The district court never reached the merits of appellant's first claim of ineffective assistance of counsel because the claim was raised in a successive habeas corpus petition. Therefore, appellant failed to demonstrate any misunderstanding on the court's part in relation to his ineffective assistance of counsel claim. Further, appellant failed to demonstrate that failure to consider his petition on the merits would result in a fundamental miscarriage of justice.⁷

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Lee A. Gates, District Judge
Attorney General/Carson City
Clark County District Attorney
Lamarr Rowell
Clark County Clerk