

IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY WENNERSTRAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37992

FILED

MAR 28 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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 March 17, 1995, the district court convicted appellant, pursuant to a guilty plea, of four counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve eight consecutive terms of 12 years 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 March 1, 1996, appellant filed a 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 May 1, 1996, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.²

¹Wennerstrand v. State, Docket No. 28713 (Order Dismissing Appeal, June 23, 1998).

²Id.

On January 30, 2001, 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 untimely filed 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 April 27, 2001, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than five 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 a post-conviction petition for a writ of habeas corpus.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁶

In an attempt to excuse his procedural defects, appellant argued that he was filing an untimely petition because he has just discovered new evidence which shows a conflict of interest with his trial counsel because his trial counsel owned a Las Vegas bar similar to the bars that appellant robbed. Appellant concluded that due to his trial counsel's failure to disclose this conflict, the entire adversarial process was tainted and it rendered trial counsel per se ineffective.

³See NRS 34.726(1).

⁴See NRS 34.810(2).

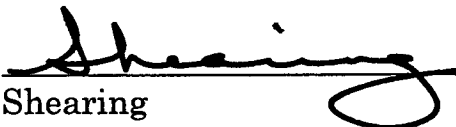
⁵See NRS 34.726(1); NRS 34.810(3).

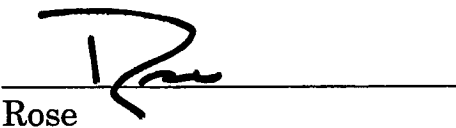
⁶See NRS 34.800(2).

Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate good cause to excuse the procedural defects and failed to overcome the presumption of prejudice to the State.⁷ Appellant failed to allege when he discovered this material or why he could not have raised this claim earlier. Moreover, appellant failed to show that an actual conflict of interest adversely affected his lawyer's performance; thus, appellant failed to demonstrate that he was actually prejudiced.⁸ We conclude that the district court did not err in denying appellant's petition as untimely.

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.

 J.
Shearing

 J.
Rose

 J.
Becker

⁷See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁸See Cuyler v. Sullivan, 446 U.S. 335, 346 (1980); Strickland v. Washington, 466 U.S. 668 (1984).

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Mark W. Gibbons, District Judge
Attorney General/Carson City
Clark County District Attorney
Tony Wennerstrand
Clark County Clerk