

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY S. CALLIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38065

FILED

MAR 26 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 April 7, 1989, the district court convicted appellant, pursuant to a guilty plea, 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 untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹

On June 15, 1998, 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 July 27, 1998, the district court denied appellant's petition. This court dismissed appellant's subsequent appeal.²

¹Callin v. State, Docket No. 29607 (Order Dismissing Appeal, December 18, 1996).

²Callin v. State, Docket No. 32931 (Order Dismissing Appeal, January 30, 2001).

On April 24, 2001, appellant filed a 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. 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 June 20, 2001, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately twelve 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 defaults, appellant argued that his counsel failed to inform him of his appellate rights, that he received ineffective legal assistance from an inmate, and that he must exhaust state remedies. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's

³See NRS 34.726(1).

⁴See NRS 34.810(b)(2); NRS 34.810(2).


⁵See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

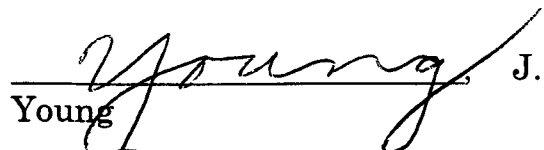
⁶See NRS 34.800(2).

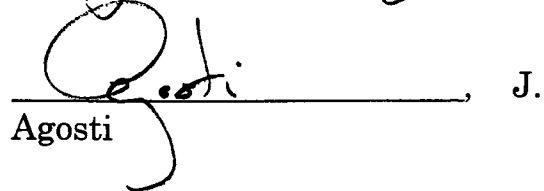
petition. Appellant failed to demonstrate good cause and failed to overcome the presumption of prejudice to the State.⁷

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


_____, C.J.
Maupin


_____, J.
Young


_____, J.
Agosti

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Timothy S. Callin
Clark County Clerk

⁷See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988); Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998); see also Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

⁸See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.