

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY W. GRIMALDI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37550

FILED

DEC 18 2001

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

TIMOTHY W. GRIMALDI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

ORDER OF AFFIRMANCE

Docket Nos. 37550 and 38109 are proper person appeals from orders of the district court denying appellant's post-conviction petitions for writs of habeas corpus. We elect to consolidate these appeals for disposition.¹

On June 9, 1972, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison without the possibility of parole. This court affirmed appellant's judgment of conviction and appeal.² The remittitur issued on February 26, 1974.

On January 30, 1997, 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

¹See NRAP 3(b).

²Grimaldi v. State, 90 Nev. 83, 518 P.2d 615 (1974).

conduct an evidentiary hearing. On April 10, 1997, the district court denied appellant's petition. On September 15, 1998, appellant filed a second 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 November 24, 1998, the district court denied appellant's petition. This court consolidated the subsequent appeals for disposition and dismissed the appeals.³

Docket No. 37550

On December 7, 2000, appellant filed his third 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 February 21, 2001, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately 26 years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Appellant's petition was successive because he had previously filed two post-conviction petitions for writs of habeas corpus.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 was denied access to the courts by prison policies and that no one would help him in the law library. Appellant also appeared to

³Grimaldi v. State, Docket Nos. 30516 and 33508 (Order Dismissing Appeals, May 27, 1999).

⁴See NRS 34.726(1).

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

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

⁷See NRS 34.800(2).

make a claim of actual innocence but did not support the claim with any factual allegations. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate good cause and failed to overcome the presumption of prejudice to the State.⁸ Moreover, appellant failed to make a credible claim of actual innocence; thus, he failed to demonstrate that failure to consider his claims would result in a fundamental miscarriage of justice.⁹ We conclude that appellant is not entitled to relief.

Docket No. 38109

On March 13, 2001, appellant filed his fourth 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 May 31, 2001, the district court denied appellant's petition. This appeal followed.¹⁰

Appellant filed his petition approximately 27 years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.¹¹ Appellant's petition was successive because he had previously filed three post-conviction petitions for writs of habeas corpus.¹² Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.¹³ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.¹⁴

⁸See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

⁹See Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996); see also Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

¹⁰We note that some of appellant's claims challenge the conditions of confinement and thus were improperly raised in a post-conviction petition for a writ of habeas corpus. See Bowen v. Warden, 100 Nev. 489, 686 P.2d 250 (1984).

¹¹See NRS 34.726(1).

¹²See NRS 34.810(1)(b)(2); NRS 34.810(2).

¹³See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

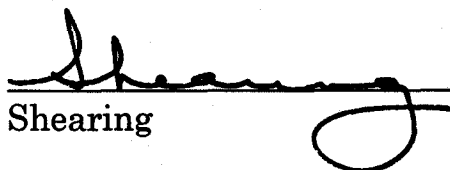
¹⁴See NRS 34.800(2).

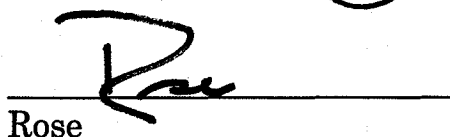
In an attempt to excuse his procedural defects, appellant argued that he had just learned the law. Appellant also appeared to make a claim of actual innocence but did not support this claim with any factual allegations. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate good cause to excuse the procedural bars and failed to overcome the presumption of prejudice to the State.¹⁵ Moreover, appellant failed to make a credible claim of actual innocence; thus, he failed to demonstrate that failure to consider his claims would result in a fundamental miscarriage of justice.¹⁶ We conclude that appellant is not entitled to relief.


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.¹⁷ Accordingly, we

ORDER the judgments of the district court AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Nancy M. Saitta, District Judge
Attorney General/Carson City
Clark County District Attorney
Timothy W. Grimaldi
Clark County Clerk

¹⁵See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

¹⁶See Mazzan, 112 Nev. 838, 921 P.2d 920; see also Hargrove, 100 Nev. 498, 686 P.2d 222.

¹⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).