

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY D. BRIGGS, SR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38203

FILED

APR 15 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 October 15, 1981, the district court convicted appellant, after a jury trial, of four counts of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve definite terms totaling sixty years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction.<sup>1</sup> The remittitur issued on January 18, 1983.

On September 8, 1992, appellant filed a proper person petition for post-conviction relief in the district court. The district court dismissed

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<sup>1</sup>Briggs v. State, Docket No. 13753 (Order Dismissing Appeal, December 28, 1982).

the petition on the ground that the petition was procedurally time-barred. This court dismissed appellant's subsequent appeal.<sup>2</sup>

On January 22, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court.<sup>3</sup> The State opposed the petition arguing that the petition was untimely and successive. Moreover, the State specifically pleaded laches. Appellant filed a reply. 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 30, 2001, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than eighteen years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>4</sup> Moreover, appellant's petition was successive because he had previously filed a petition for post-conviction relief.<sup>5</sup> Appellant's petition was procedurally barred absent a demonstration of

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<sup>2</sup>Briggs v. State, Docket No. 24376 (Order Dismissing Appeal, February 4, 1994).

<sup>3</sup>Appellant labeled his petition, "petition for a writ of habeas corpus NRS 34.360." Because appellant challenged the validity of his conviction, we conclude that the district court properly construed appellant's petition to be a post-conviction petition for a writ of habeas corpus. NRS 34.724(2)(b).

<sup>4</sup>NRS 34.726(1).

<sup>5</sup>NRS 34.810(b)(2); NRS 34.810(2).

good cause and prejudice.<sup>6</sup> Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.<sup>7</sup>

In an attempt to excuse his procedural defects, appellant argued that the justice's court and the district court lacked jurisdiction because the criminal complaint had never been file-stamped in the justice's court. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to excuse his procedural defects or overcome the presumption of prejudice to the State.<sup>8</sup> Appellant's claim that the courts lacked jurisdiction was patently without merit.<sup>9</sup> The criminal complaint was among the documents certified to the district court by the justice of the peace as a "full, true and correct copy of the proceedings" in the justice's court. Further, appellant did not object to the alleged defect in the justice's court, and records of the proceedings in the justice's court reveal that the criminal complaint was read to appellant at his initial appearance

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<sup>6</sup>NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

<sup>7</sup>NRS 34.800(2).

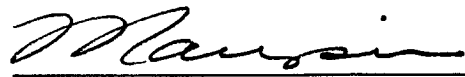
<sup>8</sup>Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>9</sup>NRS 171.010; 171.102; 171.178; 171.186.

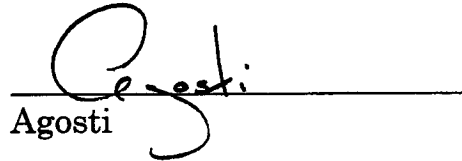
before the justice of the peace.<sup>10</sup> Therefore, the district court did not err in denying the petition.

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.<sup>11</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 C.J.  
Maupin

 J.  
Young

 J.  
Agosti

cc: Hon. Jeffrey D. Sobel, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Terry D. Briggs, Sr.  
Clark County Clerk

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<sup>10</sup>See State v. Holt, 47 Nev. 233, 219 P. 557 (1923) (holding that defendant waived defect relating to filing of a formal criminal complaint where defendant failed to raise the issue to the justice of the peace and waived reading of the charges upon which the preliminary hearing was held).

<sup>11</sup>Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).