

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMMY LEWIS JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38541

FILED

MAY 23 2002

JANE M. 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 May 18, 1995, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon and one count of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling 70 years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on July 8, 1997.

On July 8, 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 conduct an evidentiary hearing. On September 19, 1997, the district court

¹Johnson v. State, Docket No. 27255 (Order Dismissing Appeal, June 17, 1997).

denied appellant's petition. This court dismissed appellant's subsequent appeal.²

On June 20, 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. 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 September 10, 2001, the district court denied appellant's petition. This appeal followed.³

Appellant filed his petition approximately four years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶

In an attempt to excuse his procedural defects, appellant argued that his petition was timely filed because he filed his petition less than one year after this court issued the remittitur from the order denying his first post-conviction petition for a writ of habeas corpus. We conclude

²Johnson v. State, Docket No. 31133 (Order Dismissing Appeal, June 16, 2000).

³Appellant's notice of appeal states that he is also appealing from the "denial of production of transcripts." The record does not reveal that such a motion was ever filed in connection with the 2001 petition.

⁴See NRS 34.726(1).


⁵See NRS 34.810(1)(b)(2).


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

that the district court did not err in denying appellant's petition. NRS 34.726 requires that a post-conviction petition for a writ of habeas corpus must be filed within one year after this court issues the remittitur from the direct appeal. This court issued the remittitur from appellant's direct appeal on July 8, 1997. Appellant failed to demonstrate good cause and prejudice to overcome his procedural defects.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Michael L. Douglas, District Judge
Attorney General/Carson City
Clark County District Attorney
Sammy Lewis Johnson
Clark County Clerk

⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.