

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAURY A. SINGER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38561

FILED

JUN 27 2002

JANE FTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
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 July 13, 1988, the district court convicted appellant, pursuant to a jury verdict, of three counts of burglary and nine counts of sexual assault with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling one hundred and twenty years in the Nevada State Prison. This court dismissed appellant's direct appeal.<sup>1</sup> The remittitur issued on November 14, 1989.

On July 29, 1991, appellant filed a proper person petition for post-conviction relief. The district court appointed counsel to represent appellant and found good cause for appellant's untimely filing of the petition. Appellant's post-conviction counsel supplemented the petition. The district court denied appellant's petition. This court dismissed appellant's subsequent appeal.<sup>2</sup>

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<sup>1</sup>Singer v. State, Docket No. 19407 (Order Dismissing Appeal, October 24, 1989).

<sup>2</sup>Singer v. State, Docket No. 23916 (Order Dismissing Appeal, July 28, 1995).

On April 15, 1996, appellant filed a post-trial motion for specific discovery of Brady material not previously discovered.<sup>3</sup> The district court construed appellant's motion to be a post-conviction petition for a writ of habeas corpus and denied the motion. Appellant filed a timely appeal. On June 21, 1996, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The district court denied the petition. Appellant filed a timely appeal. This court consolidated and dismissed the appeals.<sup>4</sup>

On April 6, 2001, appellant filed another proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant filed numerous documents in support of the petition. The State opposed the petition arguing that the petition was untimely filed and successive. Moreover, the State specifically pleaded laches. Appellant filed a response. 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 5, 2001, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than eleven years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>5</sup> Moreover, appellant's petition was successive because he had previously filed post-conviction petitions.<sup>6</sup> Appellant's

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<sup>3</sup>Brady v. Maryland, 373 U.S. 83, 87 (1963). Appellant's counsel for his petition for post-conviction relief filed this motion on appellant's behalf; however, counsel subsequently withdrew from the case.

<sup>4</sup>Singer v. State, Docket Nos. 29029, 29547, 29910 (Order Dismissing Appeals and Denying Petition for Rehearing or Clarification, February 24, 1998).

<sup>5</sup>See NRS 34.726(1).

<sup>6</sup>See NRS 34.810(1)(b)(2); NRS 34.810(2).

petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>7</sup> Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.<sup>8</sup>

In an attempt to excuse his procedural defects, appellant argued: (1) he received ineffective assistance of post-conviction counsel, (2) he received ineffective assistance of trial and appellate counsel, (3) he did not know that a witness had recanted his allegedly perjured testimony until after he had filed his first petition for post-conviction relief, (4) the district court erred in denying his previous petitions, (5) this court erred in dismissing his previous appeals, (6) the procedural bars were inapplicable because appellant believed that they are inconsistently applied, and (7) he was actually innocent of the crimes. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate adequate cause or overcome the presumption of prejudice to the State. Appellant did not have the right to counsel at the time he filed his first petition, and therefore he did not have the right to the effective assistance of counsel in that proceeding.<sup>9</sup> "[H]ence, 'good cause' cannot be shown based on an ineffectiveness of post-conviction counsel claim."<sup>10</sup> Appellant failed to demonstrate that the factual or legal basis for his claims was not reasonably available during the prior proceedings; thus, appellant's other arguments did not establish

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<sup>7</sup>See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

<sup>8</sup>See NRS 34.800(2).

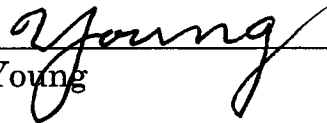
<sup>9</sup>McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996); 1987 Nev. Stat., ch. 539, § 42, at 1230-31; see also Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997).


<sup>10</sup>McKague, 112 Nev. at 165, 912 P.2d at 258.

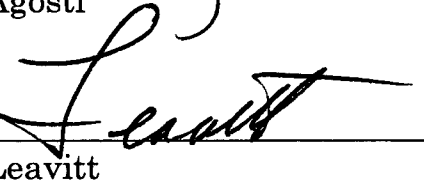
good cause to excuse the procedural defects.<sup>11</sup> Finally, appellant did not demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice.<sup>12</sup>

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>13</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>14</sup>

 \_\_\_\_\_, J.  
Young

 \_\_\_\_\_, J.  
Agosti

 \_\_\_\_\_, J.  
Leavitt

cc: Hon. John S. McGroarty, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Maury A. Singer  
Clark County Clerk

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<sup>11</sup>Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>12</sup>Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

<sup>13</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>14</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.