

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN MITCHELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38821

FILED

MAY 15 2002

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus.

On July 10, 2000, the district court convicted appellant, pursuant to a bench trial, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of sixty-two months to one hundred and fifty-six months in the Nevada State Prison. This court affirmed appellant's judgment of conviction.<sup>1</sup>

On March 28, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Judge Connie Steinheimer construed four of appellant's claims to be a motion to disqualify Judge Steinheimer. Judge Steinheimer filed a written answer denying the allegations of bias and transferred the matter to Chief Judge Janet Berry for resolution of the motion to disqualify. Chief Judge Berry considered the matter and denied appellant's motion to disqualify Judge

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<sup>1</sup>Mitchell v. State, Docket No. 36557 (Order of Affirmance, January 9, 2001).

Steinheimer and transferred the matter to Judge Steinheimer for further proceedings. On May 16, 2001, Judge Steinheimer determined that the remaining claim in appellant's petition lacked merit and denied the petition. Appellant did not file an appeal from that decision.

On July 6, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court raising new claims for relief. The State filed a motion to dismiss the petition. 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 November 6, 2001, the district court dismissed the petition. This appeal followed.

Appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.<sup>2</sup> Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.<sup>3</sup>

Appellant argued that his procedural defect should be excused because it was unfair to require him to raise all of his claims in his first petition. Appellant further argued that he did not raise all of his claims in his first petition because in that petition he was claiming the district court was biased. 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.<sup>4</sup>

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<sup>2</sup>See NRS 34.810(2).

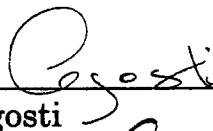
<sup>3</sup>See NRS 34.810(3).

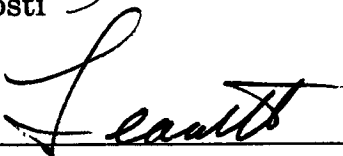
<sup>4</sup>Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

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>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Connie J. Steinheimer, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Sean Mitchell  
Washoe District Court Clerk

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<sup>5</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).