

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY T. LARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38947

FILED

JUL 22 2002

ORDER OF AFFIRMANCE

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

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 January 6, 1995, the district court convicted appellant, pursuant to an Alford plea,¹ 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. No direct appeal was taken.

On January 8, 1996, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. Appellant filed a supplemental motion. The State opposed the supplemental motion. On September 16, 1996, the district court denied the petition and supplemental motion. This court dismissed appellant's subsequent appeal.²

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²Lark v. Warden, Docket No. 29295 (Order Granting Rehearing, Reinstating, and Dismissing Appeal, June 15, 1999).

On December 18, 1998, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On April 21, 1999, the district court denied the motion. This court affirmed the order of the district court on appeal.³

On September 26, 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 arguing that the petition was untimely filed and successive. Moreover, the State 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 December 17, 2001, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than six years after entry of the judgment of conviction. 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 Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁷

³Lark v. State, Docket No. 33787 (Order of Affirmance, February 22, 2001).

⁴NRS 34.726(1).

⁵NRS 34.810(2).

⁶NRS 34.726(1); NRS 34.810(3).

⁷NRS 34.800(2).

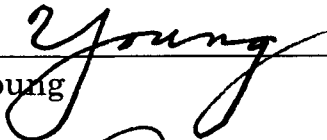
In an attempt to excuse his procedural defects, appellant argued: (1) that he was raising a question of law, (2) that he was ignorant of the remedy, (3) that he was not informed of his right to appeal, (4) that the State allegedly withheld exculpatory evidence until after entry of the plea, (5) that he received ineffective assistance of counsel throughout the proceedings, (6) that he was raising novel claims for relief that could not have been reasonably discovered earlier, (7) that the district court committed plain error during the plea canvass, and (8) that his plea was invalid and the product of trickery. Appellant further argued that he was actually innocent of the offense. 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.⁸ Appellant failed to demonstrate that the claims that he raised in the petition could not have been raised in the prior petition or discovered earlier in the proceedings. Finally, appellant did not demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice.⁹

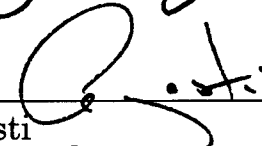
⁸Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998) (holding that "an allegation that trial counsel was ineffective in failing to inform a claimant of the right to appeal from the judgment of conviction, or any other allegation that a claimant was deprived of a direct appeal without his or her consent, does not constitute good cause to excuse the untimely filing of a petition pursuant to NRS 34.726"); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that a petitioner's limited intelligence or inability to obtain proper assistance from an inmate law clerk did not constitute good cause).


⁹Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996) (stating that a petitioner may be entitled to review of defaulted claims if
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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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Michael L. Douglas, District Judge
Attorney General/Carson City
Clark County District Attorney
Jeffrey T. Lark
Clark County Clerk

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failure to review the claims would result in a fundamental miscarriage of justice); see also Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984) (determining that a challenge to the voluntariness of an Alford plea based upon a claim of actual innocence is “essentially academic”).

¹⁰Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).