

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC LYNN ULLRICH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39310

FILED
DEC 05 2002

DEC 05 2002

ORDER OF AFFIRMANCE

CLERK OF SUPREME COURT
J. Richard
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 March 16, 1990, the district court convicted appellant, pursuant to a guilty plea, of two counts of sexual assault. The district court sentenced appellant to serve in the Nevada State Prison two concurrent terms of life with the possibility of parole. Appellant did not file a timely direct appeal.

On August 6, 1990, appellant filed his first post-conviction proper person petition for a writ of habeas corpus in the district court. On September 27, 1990, the district court denied the petition. This court dismissed appellant's subsequent appeal.¹

On June 14, 1996, appellant filed his second proper person post-conviction petition for a writ of habeas corpus in the district court. In his petition appellant argued that his counsel was ineffective for failing to inform him of his right to appeal and for failing to fully investigate

¹Ullrich v. State, Docket No. 21820 (Order Dismissing Appeal, June 27, 1991).

potential witnesses. The State opposed the petition. Appellant was appointed counsel to represent him in the post-conviction proceedings, and counsel filed a reply to the State's response. In the reply, appellant argued that his petition was not untimely filed and successive because he could not have known that he had been denied his right to appeal until after this court's decision in Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994). On October 6, 1998, the district court, without hearing argument from the State, granted appellant leave to file a supplemental brief to his petition pursuant to Lozada.

On December 17, 1998, appellant filed his supplemental brief in support of his second petition for a writ of habeas corpus. In his supplemental brief, appellant did not raise any direct appeal claims. Rather, appellant resurrected his claim that his counsel was ineffective for failing to properly investigate. On June 25, 1999, the district court denied appellant's petition on the ground that appellant had failed to demonstrate he was entitled to relief. This court dismissed appellant's subsequent appeal on the grounds that the petition was untimely filed and successive.² This court also held that the district court had erred in reaching the merits of appellant's petition, but that it had reached the correct result.³

On September 4, 2001, appellant filed the instant proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that it was untimely and

²Ullrich v. State, Docket No. 34520 (Order of Affirmance, November 27, 2000).

³Id.

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 January 30, 2002, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than eleven 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 two petitions for post-conviction relief.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

In his petition, appellant's sole claim was that, following the district court's granting appellant leave to file a supplemental brief pursuant to Lozada, "counsel did not bring a single Lozada issue, thus rendering ineffectie [sic] assistance of counsel." Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Because this court previously determined that appellant's second petition was procedurally barred and that appellant was not entitled to the Lozada remedy, appellant cannot

⁴See NRS 34.726(1).

⁵See NRS 34.810(1)(b)(2) NRS 34.810(2).


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

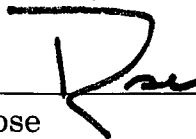
⁷See NRS 34.800(2).

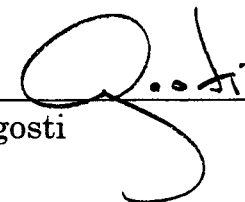
demonstrate good cause and prejudice by arguing that his counsel was ineffective.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, C.J.
Young

 _____, J.
Rose

 _____, J.
Agosti

cc: Hon. Lee A. Gates, District Judge
Attorney General/Carson City
Clark County District Attorney
Eric Lynn Ullrich
Clark County Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).