

IN THE SUPREME COURT OF THE STATE OF NEVADA

PEGGY N. HART,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39422

FILED

DEC 04 2002

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Peggy N. Hart's post-conviction petition for a writ of habeas corpus.

On December 4, 1998, Hart was convicted, pursuant to a guilty plea, of two counts of sexual assault of a child (counts III and IV of the information), one count of unlawful use of a minor in producing pornography (count V), and one count of unlawful possession of visual presentation depicting sexual conduct of a person under 16 years of age (count VI).¹ The district court sentenced Hart to serve a term of life in prison with parole eligibility after 20 years for count III, a concurrent term of life in prison with parole eligibility after 20 years for count IV, a consecutive term of life in prison with parole eligibility after 10 years for count V, and a consecutive term of 28-72 months in prison for count VI. Hart was also ordered to pay a fine of \$50,000.00 for count V. Hart did not pursue an appeal from the judgment of conviction.

On November 16, 1999, Hart filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On

¹Hart's codefendant was her husband, Michael E. Hart.

January 21, 2000, the district court denied the petition without conducting an evidentiary hearing. The district court denied the petition on jurisdictional grounds, noting that the petition was not signed or verified by Hart, but rather was signed by her incarcerated husband as her “attorney in fact,” even though he was not an attorney or authorized to practice law.

On February 10, 2000, Hart filed a motion for reconsideration of the order denying her habeas petition in the district court.² Once again, the motion was not signed or verified by Hart, and instead was signed by her husband. The district court appointed counsel to represent Hart for purposes of the “motion for reconsideration only.” On July 20, 2000, the district court granted appointed counsel’s request to withdraw for medical reasons, and appointed Mary Lou Wilson to represent Hart. Inexplicably, the district court established a briefing schedule wherein counsel was given 45 days to file a supplemental habeas petition.

In August 2000, with the assistance of counsel, Hart filed a “supplement” to her previously dismissed habeas petition; she subsequently filed an “addendum” to the supplement. Neither document discussed the dismissed petition, the district court’s order, or the motion for reconsideration. On October 12, 2000, the State filed both an answer opposing the supplemental petition and addendum, and an opposition to the motion for reconsideration. On January 2, 2002, the district court denied the motion for reconsideration of the order dismissing the original petition for the same reason – the petition was never verified.

²In violation of DCR 13(7), Hart never sought leave from the district court to file the motion for reconsideration.

On January 15, 2002, with the assistance of counsel, Hart filed a "Reconsideration of Order Denying the Motion to Reconsider the Order Dismissing the Petition for Writ of Habeas Corpus" in the district court. Hart did not seek leave of the court to file such a document.³ The State opposed the motion to reconsider the order denying the motion to reconsider the dismissal of the original petition, and Hart filed a reply. On March 8, 2002, the district court denied the motion.

On March 14, 2002, more than two years after Hart's habeas petition was dismissed, the district court finally filed a notice of entry of its decision or order. Therefore, pursuant to NRS 34.575(1),⁴ Hart was given the opportunity to appeal from the denial of her initial unverified petition. Hart subsequently filed this timely appeal.

Hart contends the district court erred in denying the original habeas petition.⁵ Hart argues that: (1) the verified supplemental petition filed with the assistance of counsel cured the jurisdictional defect in the

³See DCR 13(7).

⁴NRS 34.575(1) states: "An applicant who . . . has petitioned the district court for a writ of habeas corpus and whose application for the writ is denied, may appeal to the supreme court from the order and judgment of the district court, but the appeal must be made within 30 days after service by the court of written notice of entry of the order or judgment." See also Lemmond v. State, 114 Nev. 219, 954 P.2d 1179 (1998).

⁵Hart also contends the district court erred in denying her two subsequent motions for reconsideration. This court has stated, however, that "no statute or court rule provides for an appeal from an order denying a motion for reconsideration, [therefore] we lack jurisdiction to entertain appeals from such orders." Phelps v. State, 111 Nev. 1021, 1022, 900 P.2d 344, 345 (1995).

first petition; (2) the State's opposition to the supplemental petition "acted as a waiver" of the procedural default; and (3) the district court somehow "invited error" by denying the petition yet "permitting Ms. Hart the opportunity to 'cure' the perceived procedural default." We disagree with Hart's contentions.

Initially, we note that Hart has provided this court with no relevant authority in support of her contentions.⁶ Nevertheless, our review of the record reveals that her contentions are without merit. The verification of a petition is a jurisdictional requirement,⁷ and must be made by the petitioner or by petitioner's counsel.⁸ In this case, Hart's petition was executed, signed, and filed by her codefendant, non-attorney husband, and he was not authorized to practice law. Further, Hart has failed to provide this court with any authority for the proposition that such a defect may be cured by a subsequent filing, in her case the supplemental petition, which thereby retroactively invokes the jurisdiction of the district court.⁹ Therefore, we conclude that the district court did not err in denying Hart's petition.

⁶See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (holding that "[i]t is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court").

⁷Sheriff v. Scaliq, 96 Nev. 776, 616 P.2d 402 (1980).

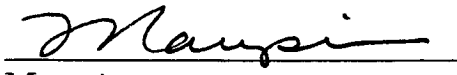
⁸NRS 34.730(1).

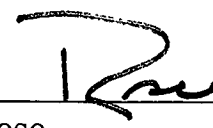
⁹See generally Craig v. Harrah, 65 Nev. 294, 310-12, 195 P.2d 688, 695-96 (1948) (holding that a jurisdictional prerequisite may not relate-back).

Having considered Hart's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Young


_____, J.
Maupin


_____, J.
Rose

cc: Hon. Jerome Polaha, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk