

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLEVELAND JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39474

FILED

DEC 12 2002

ORDER OF AFFIRMANCE

JANEETL M. BLOOM,
CLERK OF SUPREME COURT
By *J. Richard*
C. DEFLORIAN, 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 22, 1993, the district court convicted appellant, pursuant to a guilty plea, of one count of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. No direct appeal was taken.

On June 9, 1994, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On July 13, 1994, the district court denied the petition. This court dismissed appellant's subsequent appeal.¹

On December 21, 2001, appellant filed a 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

¹Jackson v. State, Docket No. 26361 (Order Dismissing Appeal, June 23, 1998).

to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On March 26, 2002, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition almost nine years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.³ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁴ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁵

In an attempt to excuse his procedural defects, appellant argued that the deadly weapon enhancement was infirm pursuant to the United States Supreme Court's recent holding in Apprendi v. New Jersey.⁶ Appellant failed to demonstrate good cause because the rule announced in Apprendi does not apply retroactively.⁷ Therefore, we conclude that the

²See NRS 34.726(1).

³See NRS 34.810(2).

⁴See NRS 34.726(1); NRS 34.810(3).

⁵See NRS 34.800(2).

⁶530 U.S. 466 (2000).

⁷Caspari v. Bohlen, 510 U.S. 383 (1994) (discussing retroactive application of new rules of criminal procedure); Teague v. Lane, 489 U.S. 288 (1989) (same); see also Rees v. Hill, 286 F.3d 1103 (9th Cir. 2002) (holding that because the decision in Apprendi does not apply retroactively to cases on initial collateral review it does not meet the requirements for filing a second federal petition for habeas relief); United States v. Sanchez-

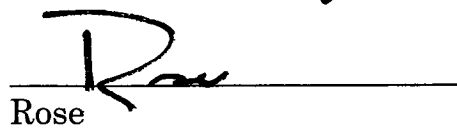
continued on next page . . .

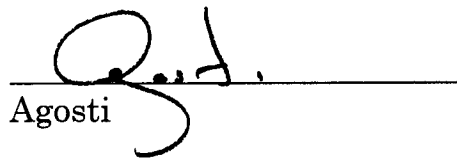
district court did not err in determining that appellant failed to demonstrate adequate cause to excuse his procedural defects or overcome the presumption of prejudice to the State.⁸

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, C.J.
Young

 _____, J.
Rose

 _____, J.
Agosti

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Cleveland Jackson
Clark County Clerk

... continued

Cervantes, 282 F.3d 664 (9th Cir. 2002) (holding that the new rule of criminal procedure announced in Apprendi does not apply retroactively on initial collateral review).

⁸Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external the defense).

⁹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).