

IN THE SUPREME COURT OF THE STATE OF NEVADA

TANIKO SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39860

FILED

APR 10 2003

ORDER OF AFFIRMANCE

JANETTE M. SLOOM
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 May 2, 1997, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree murder with the use of a deadly weapon, one count of attempted murder with the use of a deadly weapon, two counts of robbery with the use of a deadly weapon, and one count of attempted robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole and consecutive terms totaling sixty years. This court dismissed appellant's appeal from his judgment of conviction.¹ The remittitur issued on December 22, 1998.

On October 30, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a response. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to

¹Smith v. State, Docket No. 30243 (Order Dismissing Appeal, December 3, 1998).

represent appellant or to conduct an evidentiary hearing. On January 31, 2001, the district court denied appellant's petition on the ground that it was procedurally time-barred. Appellant filed a timely appeal, and this court affirmed the order of the district court.²

On January 30, 2002, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant retained counsel, and counsel supplemented the petition. The State opposed the petition and supplements. On July 10, 2002, after conducting a hearing, the district court denied the petition. This appeal followed.

Appellant filed his petition approximately three years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice.⁴ A petitioner must show that an impediment external to the defense prevented compliance with the time requirements.⁵ A petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice.⁶

Appellant argued that newly discovered evidence, copies of the written verdicts from his trial, should excuse his procedural defects

²Smith v. State, Docket No. 37387 (Order of Affirmance, November 20, 2001).

³See NRS 34.726(1).

⁴See id.

⁵Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁶Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

because he had only received copies of the verdicts in 2002 despite his diligent efforts to obtain copies of the verdicts from the district court. He argued that he could not have challenged the guilty verdict form for the murder count earlier without a copy of the verdict form. Appellant also claimed that he was actually innocent of the charged offenses.

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 to excuse his procedural defects. Appellant failed to demonstrate that an impediment external to the defense prevented him from pursuing his claims in a timely habeas corpus petition. The claim regarding the guilty verdict form for the murder count was raised during the trial proceedings. Appellant further raised this claim in his prior, untimely habeas corpus petition.⁷ Thus, the fact that appellant did not himself have a copy of the verdict form until 2002 did not prevent appellant from raising his claim challenging the guilty verdict for the murder count in a timely fashion.⁸ Therefore, appellant did not demonstrate that newly discovered evidence excused his procedural

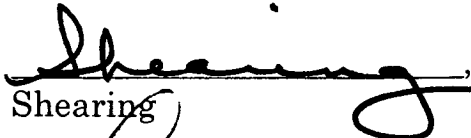
⁷We note that his first habeas corpus petition was filed prior to the date that appellant claimed to have received copies of the verdicts.

⁸See Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995) (holding that trial counsel's failure to send a petitioner his files did not prevent the petitioner from filing a timely habeas corpus petition); cf. Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001) (recognizing that an impediment external to the defense might be demonstrated by a showing that the factual or legal basis for the claim was not reasonably available to counsel).

defects. Finally, appellant did not demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice.⁹

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.¹¹


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Nancy M. Saitta, District Judge
Taniko Smith
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁹See Mazzan, 112 Nev. at 842, 921 P.2d at 922.

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

¹¹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.