

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LEE LAMBERT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40173

FILED

MAY 23 2003

ORDER OF AFFIRMANCE

JANETTE 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 dismissing appellant's post-conviction petition for a writ of habeas corpus.

On December 14, 1994, the district court convicted appellant, pursuant to a guilty plea, of one count of first degree kidnapping and two counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling seventy years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on August 13, 1996.

On August 19, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On November 20, 1998, the district court

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<sup>1</sup>Lambert v. State, Docket No. 26492 (Order Dismissing Appeal, July 22, 1996).

denied appellant's petition, and this court dismissed appellant's subsequent appeal.<sup>2</sup>

On June 11, 2002, appellant filed his second proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition arguing that the petition was untimely filed and successive. Moreover, the State specifically pleaded laches. Appellant filed an opposition to the State's motion to dismiss. 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 August 9, 2002, the district court granted the State's motion to dismiss the petition by written order, and on September 6, 2002, the district court entered specific findings of fact and conclusions of law. This appeal followed.

Appellant filed his petition almost six years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>3</sup> Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.<sup>4</sup> Appellant's petition was procedurally barred absent a

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<sup>2</sup>Lambert v. State, Docket No. 33463 (Order Dismissing Appeal, September 18, 2000).

<sup>3</sup>See NRS 34.726(1).

<sup>4</sup>See NRS 34.810(2). Appellant's 2002 petition raised both new and previously raised claims.

demonstration of good cause and prejudice.<sup>5</sup> Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.<sup>6</sup>

In an attempt to excuse his procedural defects, appellant asserted that he had no knowledge of the law and that he was forced to rely upon inmate counsel for any and all litigation on his behalf. Appellant claimed that he had received bad advice from inmate law clerks over the years regarding the time limits and post-conviction remedies. He also claimed that some inmate law clerks would not help him because of his alleged gang affiliation and his race. Finally, he noted that he has been housed in lockdown facilities. 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 good cause or overcome the presumption of prejudice to the State.<sup>7</sup> Appellant's lack of legal knowledge or poor assistance from inmate law clerks did not excuse his procedural defects.<sup>8</sup> Appellant failed to demonstrate that the facilities in which he has been incarcerated prevented him from filing a timely habeas corpus petition.

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<sup>5</sup>See NRS 34.726(1); NRS 34.810(3).

<sup>6</sup>See NRS 34.800(2).

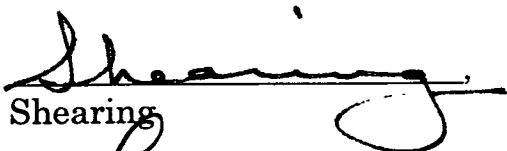
<sup>7</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).


<sup>8</sup>See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

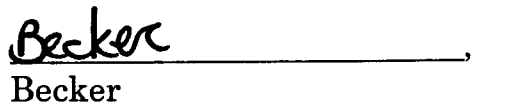
Thus, we affirm the order of the district court dismissing appellant's petition.

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.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. Sally L. Loehrer, District Judge  
Michael Lee Lambert  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).