

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID LEE MIMS,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, CRAIG
FARWELL,
Respondent.

No. 40237

FILED

MAY 23 2003

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

ORDER OF AFFIRMANCE

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 July 25, 1996, the district court convicted appellant, pursuant to a jury verdict, of one count of sexual assault with the use of a deadly weapon, two counts of first degree kidnapping with the use of a deadly weapon and one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve six consecutive terms of life in the Nevada State Prison with the possibility of parole and consecutive terms totaling twenty years. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on October 13, 1998.

¹Mims v. State, Docket No. 29141 (Order Dismissing Appeal, September 24, 1998).

On March 29, 1999, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. The State filed an opposition. The district court denied appellant's petition, and this court affirmed the district court's order.²

On March 8, 2002, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. On April 3, 2002, the district court denied appellant's petition. No appeal was taken.

On July 10, 2002, appellant filed a third proper person post-conviction petition for a writ of habeas corpus in the district court. On August 20, 2002, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition almost four years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Moreover, appellant's petition was successive because he had previously filed two post-conviction petitions for writs of habeas corpus.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

²Mims v. State, Docket No. 34700 (Order of Affirmance, June 27, 2001).

³See NRS 34.726(1).

⁴See NRS 34.810(1)(b)(2); NRS 34.810(2).

⁵See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

Appellant argued that he had good cause to excuse his procedural defects because he was deceived by his former attorneys' allegedly false representations that they were appellant's attorneys of record in the trial court proceedings. Appellant claimed that the proceedings in the district court were void because he was not represented by his attorney of record during the trial proceedings. Appellant claimed that this was a fundamental miscarriage of justice. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate adequate cause to excuse his procedural defects.⁶ Appellant's claim was reasonably available to him prior to the filing of his untimely and successive petition; thus, appellant's argument does not excuse his procedural defects.⁷ Further, appellant did not demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice.⁸

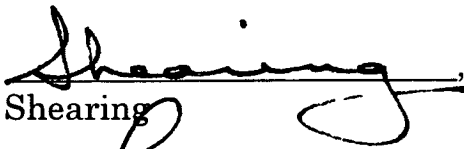
⁶See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).


⁷See Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001) (recognizing that an impediment external to the defense may be demonstrated by showing that the factual or legal basis for the claim was not reasonably available prior to the filing of the petition); see also Murray v. Carrier, 477 U.S. 478, 488 (1986).

⁸See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996) (stating that a petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice).

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.¹⁰


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Janet J. Berry, District Judge
David Lee Mims
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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

¹⁰We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.