

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH DAVID HOUSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40652

FILED

NOV 14 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 denying appellant's post-conviction petition for a writ of habeas corpus:

On February 14, 1983, the district court convicted appellant, pursuant to a guilty plea, of murder in the first degree and sexual assault causing substantial bodily harm. The district court sentenced appellant to serve two consecutive life sentences in the Nevada State Prison without the possibility of parole. No direct appeal was taken.

On May 8, 1991, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. Appellant filed a response. On September 23, 1991, the district court dismissed the petition. This court dismissed appellant's subsequent appeal.¹

On November 20, 1996, appellant filed a motion to withdraw his guilty plea in district court. The State moved to dismiss the motion,

¹Houston v. State, Docket No. 22706 (Order Dismissing Appeal, December 30, 1991).

and appellant filed a response. The district court denied the motion and this court dismissed appellant's subsequent appeal.²

On October 31, 2002, appellant filed the instant proper person post-conviction petition for a writ of habeas corpus in the district court. 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 November 19, 2002, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than nineteen years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴

Appellant does not attempt to demonstrate cause for the delay. Rather, appellant argued that his confinement was illegal because the district court declined to appoint counsel to represent him in his 1991 post-conviction petition for a writ of habeas corpus, in violation of his constitutional rights. He asserted that he was entitled to counsel as a matter of law because he proved to the court that he was indigent.

Appellant's confinement was not illegal and this claim does not excuse his procedural defect. Specifically, we note that appellant was

²Houston v. State, Docket No. 30059 (Order Dismissing Appeal, March 30, 1999).


³See NRS 34.726(1).


⁴See id.

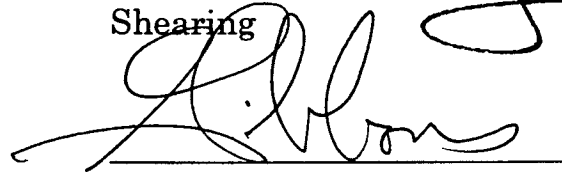
not entitled to the appointment of counsel as a matter of law.⁵ Therefore, we conclude that appellant failed to demonstrate adequate cause to excuse his delay and the district court properly denied his petition.⁶

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

⁵In 1991, NRS 177.345(1) provided that "[i]f the court is satisfied that the allegation of indigency is true, the court may appoint counsel for him within 10 days after the filing of the petition. In making its determination, the court may consider whether: (a) The issues presented by the petition are difficult; (b) The petitioner is unable to comprehend the proceedings; or (c) Counsel is necessary in order to proceed with discovery." (Emphasis added).

⁶See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. Michael R. Griffin, District Judge
Keith David Houston
Attorney General Brian Sandoval/Carson City
Carson City District Attorney
Carson City Clerk