

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRELL WAYNE GERARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40253

DARRELL WAYNE GERARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40725

FILED

SEP 29 2003

ORDER OF AFFIRMANCE

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

Docket No. 40253 is a proper person appeal from an order of the district court denying appellant's petition for a writ of habeas corpus. Docket No. 40725 is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. We elect to consolidate these appeals for disposition.¹

On April 20, 1982, the district court convicted appellant, pursuant to a guilty plea, of one count of first degree kidnapping. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. No direct appeal was taken.

Docket No. 40253

On July 18, 2002, appellant filed a proper person petition for a writ of habeas corpus in the district court. On October 28, 2002, the district court denied appellant's petition. This appeal followed.

¹See NRAP 3(b).

In his petition, appellant sought an order directing the warden to assist appellant in preparing a parole release plan. Appellant asserted that he had been reinstated to parole with the special condition that he be released to "IPSAC" only when a bed was available. However, appellant was not informed which programs would qualify, and appellant sought assistance in preparing a parole release plan.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. The record indicates that appellant was released on parole after filing his petition. Thus, appellant's challenge is moot. Therefore, we affirm the district court's order denying appellant's petition.

Docket No. 40725

On September 16, 2002, 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.² Further, the State specifically pleaded laches. On January 21, 2003, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than twenty years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a

²The State also argued that appellant's petition was successive because he had filed previously a petition on July 18, 2002. See NRS 34.810(2). However, the July 18, 2002 petition did not challenge the validity of appellant's judgment of conviction and sentence, and therefore, the instant petition was not successive. See NRS 34.722; NRS 34.724; NRS 34.810(2).

³See NRS 34.726(1).

demonstration of cause for the delay and prejudice.⁴ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁵

In attempt to excuse his procedural defects, appellant argued that: (1) he was young at the time of his crime; (2) he was an alcoholic and drug addict at the time of his crime; (3) he had only an eighth-grade education at the time of his crime; (4) he had no understanding of the law; (5) he never received transcripts that he requested from his trial counsel; (6) he was heavily medicated while he was incarcerated; (7) he was in lockdown in prison and transferred between various facilities; (8) his trial counsel was ineffective and his guilty plea was coerced. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Appellant failed to adequately explain his twenty-year delay. Thus, appellant failed to demonstrate adequate cause to excuse his delay.⁶ Appellant further failed to overcome the presumption of prejudice. Therefore, we affirm the order of the district court.

⁴See id.

⁵See NRS 34.800(2).


⁶See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

Conclusion

Having reviewed the records 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 judgments of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

cc: Hon. Michael L. Douglas, District Judge
Darrell Wayne Gerard
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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