

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND GENE PHENIX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40730

FILED

JAN 27 2004

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 Raymond Phenix's post-conviction petition for a writ of habeas corpus.

On May 25, 1995, the district court convicted Phenix, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. The district court sentenced Phenix to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. This court affirmed Phenix's appeal from his judgment of conviction and sentence.¹ The remittitur issued on March 17, 1998.

On August 14, 1998, Phenix filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On January 22, 1999, Phenix filed a second proper person post-conviction petition for a writ of habeas corpus. On May 10, 1999, Phenix filed a proper person motion for specific discovery of Brady² material not previously disclosed by the State. The district court denied Phenix's two petitions for a writ of habeas corpus as well as the motion for specific

¹Phenix v. State, 114 Nev. 116, 954 P.2d 739 (1998).

²See Brady v. Maryland, 373 U.S. 83 (1963).

discovery. This court consolidated the appeals and affirmed the district court's orders denying Phenix's petitions and dismissed the appeal from the order denying his motion for discovery of Brady material.³

On January 30, 2002, Phenix filed a third proper person post-conviction petition for a writ of habeas corpus in the district court. On March 19, 2002, the district court denied Phenix's petition. This court affirmed the order of the district court,⁴ and subsequently denied a petition for rehearing.⁵

On March 19, 2002, Phenix filed the instant proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss Phenix's petition, arguing that the petition was untimely and successive. Phenix filed a reply and a supplement to his petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Phenix or to conduct an evidentiary hearing. On January 7, 2003, the district court denied Phenix's petition. This appeal followed.

Phenix filed his petition four years after this court issued the remittitur from his direct appeal. Thus, his petition was untimely filed.⁶

³Phenix v. State, Docket Nos. 33543, 34063, 34601 (Order of Affirmance and Dismissing Appeal, April 10, 2001).

⁴Phenix v. State, Docket No. 39467 (Order of Affirmance, October 15, 2002).

⁵Phenix v. State, Docket No. 39467 (Order Denying Rehearing, November 22, 2002).

⁶See NRS 34.726(1) (providing that unless good cause is shown for the delay, a petition for a writ of habeas corpus that challenges the validity of the judgment or sentence must be filed within one year of this court's issuance of remittitur following a direct appeal). We note that

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Moreover, Phenix's petition was successive because he had previously filed three post-conviction petitions for a writ of habeas corpus.⁷ His petition was procedurally barred absent a demonstration of good cause and prejudice.⁸

In an attempt to excuse his procedural defects, Phenix argued that in June 1999, he discovered that the State had deliberately concealed evidence that another individual had pleaded guilty to conspiracy to possess a ring stolen from the victim's purse. Phenix contended that if he had been able to present this evidence to the jury, the results of his trial would likely have been different. He also argued that the failure to consider this Brady violation claim would result in a fundamental miscarriage of justice.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying Phenix's petition. Phenix failed to overcome the procedural bars because his Brady violation claim has been presented, in varying degrees of detail, in all of his previous petitions.⁹ Further, this court has previously considered and rejected Phenix's contention that a failure to consider his claim will result in a

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Phenix is incorrect in his assertion that his petition was timely because it was filed within one year of this court's latest decision concerning his case. See Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998).

⁷See NRS 34.810(1)(b)(2),(2).

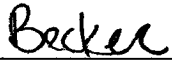
⁸See NRS 34.726(1); NRS 34.810(1)(b)(2),(3).


⁹Phenix's January 2002 petition and subsequent petition for rehearing contained an extensive discussion of the State's alleged Brady violation.

fundamental miscarriage of justice. Therefore, the district court properly determined that Phenix's petition was procedurally barred.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Phenix 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.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Michael L. Douglas, District Judge
Raymond Gene Phenix
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁰See Lockett 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.