

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL W. CORCORAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40853

FILED

JAN 27 2004

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Daniel W. Corcoran's post-conviction petition for a writ of habeas corpus.

In 1997, Corcoran was convicted, pursuant to a guilty plea, of one count of first-degree murder with the use of a deadly weapon and one count of attempted murder with the use of a deadly weapon. He was sentenced to two terms of life in prison with the possibility of parole on the first count and two terms of 24 to 64 months in prison on the second, with all the terms to be served consecutively. This court dismissed Corcoran's untimely direct appeal.¹ In 1998, Corcoran filed a timely post-conviction petition for a writ of habeas corpus. The district court denied the petition, and this court affirmed the denial in October 2000.² Meanwhile, in January 2000, Corcoran filed the instant post-conviction habeas petition. The State filed an opposition claiming that the petition should be denied because it was untimely and successive and Corcoran failed to demonstrate good cause and prejudice to overcome these procedural bars.

¹See Corcoran v. State, Docket No. 31311 (Order Dismissing Appeal, December 24, 1997).

²See Corcoran v. State, Docket No. 32751 (Order of Affirmance, October 11, 2000).

The district court denied the petition in August 2000. This appeal followed.

Corcoran claims that the district court erred in denying his petition without affording him the opportunity to respond to the State's opposition. We conclude that this claim has no merit.

By statute, a court must dismiss a successive petition if it determines that the petition "fails to allege new or different grounds for relief and that the prior determination was on the merits or, if new and different grounds are alleged, . . . the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ."³ NRS 34.810(3) provides that the petitioner has the burden of pleading and proving specific facts that demonstrate both good cause for failing to present a claim before or presenting one again and actual prejudice. A petition must "relate specific facts" explaining why the petition raises claims again, did not present claims before, and/or is untimely.⁴ After a petition is filed, a court need not provide the petitioner further opportunity to show good cause and prejudice before determining whether to dismiss the petition as procedurally barred.⁵ Thus, the district court did not err in dismissing the petition after considering simply the petition and the State's opposition.

Corcoran, of course, had an opportunity to plead specific facts demonstrating good cause and prejudice to overcome the procedural bars. In the instant petition, he proffered reasons for raising grounds not

³See NRS 34.810(2).


⁴See NRS 34.735 (providing the form that a post-conviction habeas petition must substantially follow).

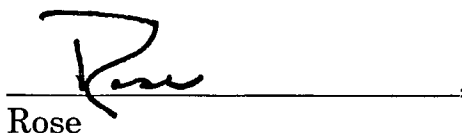
⁵See State v. Haberstroh, 119 Nev. ___, ___, 69 P.3d 676, 681, (2003).


previously presented and for the delay in filing the petition. He does not argue that the district court erred in finding these reasons inadequate, nor does he state what additional arguments for good cause and prejudice he could raise in response to the State's opposition.

Finally, Corcoran complains that the order signed by District Judge Sally L. Loehrer denying his petition incorrectly states that Judge Loehrer held a hearing on the petition when the hearing was actually before District Judge Kathy Hardcastle. He asserts that the order is therefore null because it does not conform to the district court minutes, in violation of EDCR Rule 7.10(c). That section of the rule provides: "Any order of an absent judge which is signed by another judge must conform to the minutes of the court. In such case, the order will be deemed to be the order of the original judge making the ruling, order or decision, rather than the judge signing the same." Corcoran offers no authority for his conclusion that an order is a nullity if it fails to conform to the court minutes as required by this district court rule. We conclude that he is not entitled to relief due to this mistake. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing, C.J.


Rose, J.


Maupin, J.

cc: Hon. Kathy Hardcastle, District Judge
Hon. Sally L. Loehrer, District Judge
Federal Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk