

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH KEN WINTERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41338

FILED

FEB 18 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 Keith Winters' post-conviction petition for a writ of habeas corpus.

On July 31, 2000, the district court convicted Winters, pursuant to a guilty plea, of one count of trafficking in a controlled substance, and one count of manufacturing a controlled substance. The district court sentenced Winters to serve two consecutive terms of eighteen to sixty months in the Nevada State Prison. No direct appeal was taken.

On July 6, 2001, Winters filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Winters filed a motion for summary judgment. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Winters or to conduct an evidentiary hearing. On January 10, 2002, the district court denied the petition. Winters did not appeal.

On January 2, 2002, Winters filed a motion to request documents in the district court. On February 21, 2002, Winters filed a

petition for a writ of mandamus in the district court. The district court denied the motion and petition. Winters did not appeal.

On March 21, 2002, Winters filed a motion for relief from judgment pursuant to NRCPC 60(b). On April 10, 2002, the district court denied Winters' motion, and this court affirmed the order of the district court.¹

On February 28, 2003, Winters filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Winters or to conduct an evidentiary hearing. On June 10, 2003, the district court denied Winters' petition. This appeal followed.

Winters filed his petition approximately two and a half years after entry of the judgment of conviction. Thus, his petition was untimely filed.² Moreover, Winters' petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.³ Winters' petition was procedurally barred absent a demonstration of good cause and prejudice.⁴

¹Winters v. State, Docket No. 39576 (Order of Affirmance, July 30, 2002).

²See NRS 34.726(1).

³See NRS 34.810(2).

⁴See NRS 34.726(1); NRS 34.810(3).

In an attempt to excuse his procedural defects, Winters argued that he did not receive a copy of the district court's order denying his July 6, 2001 post-conviction petition for a writ of habeas corpus. Therefore, he is raising the same claims that he alleged in his previous petition.

NRS 34.830(2) provides that a copy of the district court's order dismissing a petition must be served upon the petitioner. The record reveals that the clerk of the district court mailed Winters a notice of entry of decision and order concerning his first habeas petition on February 19, 2002. The notice complied with the requirements of NRS 34.830(3), and a copy of the district court's order was attached.

Winters failed to include specific facts in the instant petition concerning his allegation that he did not receive a copy of the district court's order denying his July 6, 2001 petition.⁵ Further, a review of the record reveals that Winters was aware of the district court's denial of his first petition during the statutory time period for filing an appeal from its denial.⁶ Winters did not explain why he failed to appeal the district court's order, and instead filed a second petition for a writ of habeas corpus alleging substantially the same claims. Therefore, Winters failed to demonstrate good cause to excuse his untimely and successive petition.

⁵See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

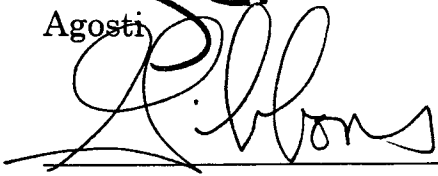
⁶Winters filed a motion to request documents and a petition for a writ of mandamus during the statutory time period for filing an appeal from the district court's denial of his first habeas petition. In both the motion and the petition, Winters acknowledged that the district court had denied his July 6, 2001 post-conviction petition for a writ of habeas corpus.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Winters is not entitled to relief and that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Keith Ken Winters
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).