

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL PIETRO EVANS,
Appellant,
vs.
WARDEN, HIGH DESERT STATE
PRISON, J.M. SCHOMIG,
Respondent.

No. 41443

FILED

FEB 19 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a district court order denying appellant Samuel Evans' post-conviction petition for a writ of habeas corpus.

On September 9, 1987, the district court convicted Evans, pursuant to a guilty plea, of one count of attempted sexual assault with the use of a deadly weapon against a victim over sixty-five years old. The district court sentenced Evans to serve a term of eighteen years in the Nevada State Prison, plus an equal and consecutive term of eighteen years as a deadly weapon enhancement. No direct appeal was taken.

On October 29, 1987, November 15, 1988, and, September 30, 1996, Evans filed proper person post-conviction petitions for writs of habeas corpus in the district court. The district court denied Evans' petitions. This court dismissed Evans' appeals from those decisions.¹

¹Evans v. Warden, Docket No. 19357 (Order Dismissing Appeal, September 24, 1988); Evans v. State, Docket No. 19906 (Order Dismissing *continued on next page . . .*

On January 31, 2003, Evans filed a fourth proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss and specifically pleaded laches. Evans filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Evans or to conduct an evidentiary hearing. On April 30, 2003, the district court denied Evans' petition. This appeal followed.

Evans' petition was untimely because it was filed more than fifteen years after the entry of his judgment of conviction.² Evans' petition was also successive because he previously filed three post-conviction petitions for writs of habeas corpus in the district court.³ Thus, Evans' petition was procedurally barred absent a showing of good cause and undue prejudice.⁴ Further, because the State pleaded laches, Evans was required to overcome a presumption of prejudice to the State.⁵

... continued

Appeal, April 25, 1989); Evans v. Warden, Docket No. 29738 (Order Dismissing Appeal, November 12, 1998).

²See NRS 34.726(1); see also Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998) (holding that the one-year period for filing a post-conviction habeas corpus petition begins to run from the entry of the judgment of conviction if no direct appeal was taken).

³See NRS 34.810(2).

⁴See NRS 34.726(1); NRS 34.810(3).

⁵See NRS 34.800(2).

Evans raised several arguments in an attempt to excuse the procedural defects in his petition. First, Evans contended that his petition should not be procedurally barred because NRS 193.165 and NRS 193.167, as enacted by the Nevada State Legislature, were unconstitutional. However, Evans failed to establish good cause,⁶ or otherwise explain why this allegation was not raised in a timely petition. Moreover, this allegation constituted a challenge to the law. Even assuming Evans did raise this allegation in a timely petition, it would nonetheless have been properly barred because the claim fell outside of the scope of claims that may be raised in a habeas corpus petition based on a guilty plea.⁷ Thus, Evans failed to overcome the procedural bars to his petition with this argument.

Second, Evans contended that the State and district court improperly construed his habeas corpus petition as a petition for post-conviction relief. Specifically, Evans contended that his habeas corpus petition was based on NRS 34.360 and, therefore, it fell outside the scope of the procedural bars found in NRS Chapter 34 that govern post-conviction habeas corpus petitions.

⁶See Pellegrini v. State, 117 Nev. 860, 886, 34 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); (stating that good cause is established by showing an impediment external to the defense prevented a petitioner from filing a timely petition); see also Murray v. Carrier, 477 U.S. 478, 488 (1986).

⁷See NRS 34.810(1)(a).

NRS 34.720(1) provides that a post-conviction habeas corpus petition is a petition that "[r]equests relief from a judgment of conviction or sentence in a criminal case." Evans has been both convicted and sentenced by the district court. Thus, by definition, Evans' habeas corpus petition sought post-conviction relief and was subject to the relevant procedural bars found in NRS Chapter 34. Thus, Evans' argument was without merit.

Finally, Evans contended that he did not allege any new legal arguments or challenge his primary conviction and therefore his petition was not successive. NRS 34.810(2) provides in part that a petition is successive and must be dismissed if the district court finds that it alleged new or different grounds for relief and "the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ." In his petition, Evans contended that NRS 193.165 and NRS 193.167 were unconstitutional. Contrary to Evans' assertion, he did not raise this ground for relief in any of his prior petitions, and he has not provided an explanation for his failure to do so. Rather, Evans has only challenged the meaning and application of NRS 193.165 and NRS 193.167 in a prior petition—he has not previously raised the issue of whether these statutes were constitutionally infirm. The district court found Evans' failure to previously raise this claim was an abuse of the writ. As such, the district court properly dismissed Evans' petition as being successive.


We conclude that the district court properly determined that Evans failed to overcome the procedural bars to his untimely and successive petition. The district court also properly determined that

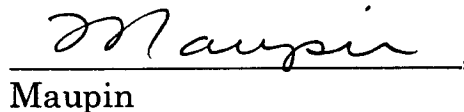
Evans failed to overcome the presumption of prejudice to the State, or show that the denial of his petition on procedural grounds would result in a fundamental miscarriage of justice.⁸

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Evans is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


Shearing, C.J.


Rose, J.


Maupin, J.

cc: Hon. Joseph T. Bonaventure, District Judge
Samuel Pietro Evans
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

⁹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.