

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK EDWARD BOEKHOFF,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41551

FILED

MAY 05 2004

ORDER OF AFFIRMANCE

JANETTE M. BELL
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 Mark Boekhoff's post-conviction petition for a writ of habeas corpus.

On May 1, 1998, the district court convicted Boekhoff, pursuant to a guilty plea, of two counts of sexual assault. The district court sentenced Boekhoff to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after twenty years. This court dismissed Boekhoff's appeal from his judgment of conviction and sentence.¹ The remittitur issued on March 14, 2000.

On October 19, 2000, Boekhoff filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed counsel to represent Boekhoff,² and counsel filed a supplement to the petition. The

¹Boekhoff v. State, Docket No. 32391 (Order Dismissing Appeal, February 16, 2000).

²See NRS 34.750.

district court subsequently conducted an evidentiary hearing on several of Boekhoff's claims.³ On December 4, 2001, the district court denied the majority of Boekhoff's petition, but vacated restitution because Boekhoff was not informed of restitution prior to entering his guilty plea.⁴ On appeal, this court affirmed the order of the district court.⁵

On April 30, 2003, Boekhoff filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Boekhoff or to conduct an evidentiary hearing. On May 21, 2003, the district court denied Boekhoff's petition. This appeal followed.

Boekhoff filed his petition more than three years after this court issued the remittitur from his direct appeal. Thus, Boekhoff's petition was untimely filed.⁶ Moreover, Boekhoff's petition was successive because he had previously filed a post-conviction petition for a writ of

³See NRS 34.770.

⁴An amended judgment of conviction was entered on November 14, 2001, which eliminated restitution.

⁵Boekhoff v. State, Docket No. 38915 (Order of Affirmance, April 9, 2003).

⁶See NRS 34.726(1).

habeas corpus.⁷ Boekhoff's petition was procedurally barred absent a demonstration of good cause and prejudice.⁸

In an attempt to excuse his procedural defects, Boekhoff alleged that his counsel in his previous post-conviction matter refused to raise several claims. Boekhoff further contended that his post-conviction counsel improperly conceded to the district court that some of the claims were meritless. Due to these errors, Boekhoff argued, he is entitled to re-raise these issues in the instant petition and is not subject to the procedural bars of NRS chapter 34.

Boekhoff did not have the right to the effective assistance of counsel in his previous post-conviction matter.⁹ Consequently, Boekhoff's excuse that his post-conviction counsel failed to raise and argue various claims in his previous petition does not provide good cause to justify the filing of the instant successive and untimely petition.¹⁰ Thus, the district court did not err in concluding that Boekhoff's petition was procedurally barred.

⁷See NRS 34.810(2).


⁸See NRS 34.726(1); NRS 34.810(3).

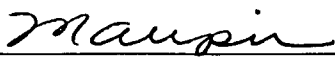
⁹See McKague v. Warden, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996).

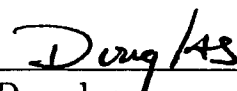
¹⁰See id. at 164-65, 912 P.2d at 258 (holding that "[w]here there is no right to counsel there can be no deprivation of effective assistance of counsel and hence, 'good cause' cannot be shown based on an ineffectiveness of post-conviction counsel claim"); Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Boekhoff is not entitled to relief and that briefing and oral argument are unwarranted.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹²

 _____, J.
Rose

 _____, J.
Maupin

 _____, J.
Douglas

cc: Hon. Steven P. Elliott, District Judge
Mark Edward Boekhoff
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

¹¹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹²We have reviewed all documents that Boekhoff has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Boekhoff has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.