

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES LEE LIKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41628

FILED

APR 20 2004

ORDER OF AFFIRMANCE

JAMES LEE LIKE, DEPUTY CLERK OF THE SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant James Like's post-conviction petition for a writ of habeas corpus.

On March 17, 1997, the district court convicted Like, pursuant to a jury verdict, of grand larceny auto. The district court adjudicated Like a habitual criminal and sentenced him to serve a term of life in the Nevada State Prison without the possibility of parole. This court dismissed Like's appeal from his judgment of conviction and sentence.¹ The remittitur issued on December 29, 1998.

On April 28, 1999, Like filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition.

¹Like v. State, Docket No. 29407 (Order Dismissing Appeal, December 9, 1998).

On June 23, 2000, the district court denied Like's petition. On appeal, this court affirmed the order of the district court.²

On March 20, 2003, Like filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss. Like filed an untimely reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Like or to conduct an evidentiary hearing. On June 25, 2003, the district court denied Like's petition. This appeal followed.

Like filed his petition more than four years after this court issued the remittitur from his direct appeal. Thus, Like's petition was untimely filed.³ Moreover, Like's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.⁴ Like's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

In an attempt to excuse his procedural defects, Like argued that he was denied the right to pursue a legal insanity defense during his trial. Like contended that he did not raise this allegation in an earlier

²Like v. State, Docket No. 36254 (Order of Affirmance, November 15, 2001).

³See NRS 34.726(1).

⁴See NRS 34.810(1)(b)(2), (2).

⁵See NRS 34.726(1); NRS 34.810(1)(b), (3).

proceeding because this court did not issue its decision in Finger v. State⁶ until 2001. In Finger, this court held that the 1995 legislative amendments abolishing the insanity defense were unconstitutional.⁷

Based upon our review of the record on appeal, we conclude that Like's reliance on this court's decision in Finger to excuse his untimely and successive petition is inappropriate. The 1995 legislative amendments abolishing the insanity defense were not applicable to Like because the offenses for which he was tried were committed in 1994.⁸ Therefore, this court's decision that the 1995 amendments were unconstitutional is of no consequence to Like's case. Further, there is nothing in the record to suggest that the district court prohibited Like from pursuing an insanity defense based on the 1995 legislative amendments. Consequently, Like failed to demonstrate good cause and prejudice to overcome the procedural bars, and the district court did not err in denying his petition.


⁶117 Nev. 548, 27 P.3d 66 (2001).

⁷Id. at 575, 27 P.3d at 84; see also 1995 Nev. Stat., ch. 637, at 2448-85.

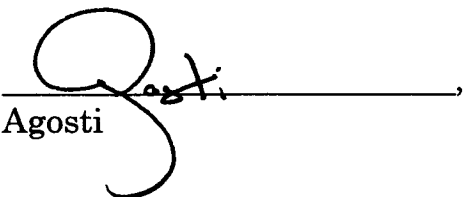
⁸See 1995 Nev. Stat., ch.637, § 61, at 2485 (stating that the amendatory provisions of the act are not applicable to criminal offenses committed before October 1, 1995).

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

 C.J.
Shearing

 J.
Becker

 J.
Agosti

cc: Hon. Michael L. Douglas, District Judge
James Lee Like
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

¹⁰We have reviewed all documents that Like 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 Like 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.