

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN STEVEN SPISAK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41640

FILED

APR 14 2004

ORDER OF AFFIRMANCE

JANET T. HULL
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court dismissing appellant John Spisak's post-conviction petition for a writ of habeas corpus without prejudice.

On January 28, 2003, the district court convicted Spisak, pursuant to a jury verdict, of attempted murder with the use of a deadly weapon. The district court sentenced Spisak to serve two consecutive terms of 84 to 210 months in the Nevada State Prison. Spisak's direct appeal is currently pending in this court in Docket No. 40720.

On January 31, 2003, Spisak filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Spisak filed amended petitions on April 18, 2003, May 1, 2003, and May 27, 2003. The State filed an opposition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Spisak or to conduct

an evidentiary hearing. On July 16, 2003, the district court dismissed Spisak's petition without prejudice. This appeal followed.

Our review of the record on appeal reveals that the district court dismissed Spisak's petition without prejudice because his direct appeal was pending in this court. No rule of law prevents the district court from exercising jurisdiction over a habeas corpus petition in these circumstances.¹ We conclude, however, that the district court did not abuse its discretion in dismissing Spisak's petition in order to preserve judicial economy.² Because Spisak's petition was dismissed without prejudice, he can re-file his petition immediately, or wait and file a petition within one year from this court's decision concerning his direct appeal.³


¹See Sheriff v. Gleave, 104 Nev. 496, 498, 761 P.2d 416, 418 (1988) (holding that "[h]abeas corpus is an independent proceeding"); Varwig v. State, 104 Nev. 40, 752 P.2d 760 (1988).


²We note that several of the claims Spisak alleged in his petition fall outside the scope of a post-conviction petition for a writ of habeas corpus, and would be more appropriately raised in his direct appeal. See NRS 34.810(1)(b)(2).


³Any subsequent petitions will be subject to the procedural requirements set forth in NRS chapter 34.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Spisak is not entitled to relief and that briefing and oral argument are unwarranted.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Joseph T. Bonaventure, District Judge
John Steven Spisak
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁴See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁵We have reviewed all documents that Spisak 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 Spisak 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.