

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDUARDO MORA-MARIN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41805

FILED

MAR 23 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 dismissing a post-conviction petition for a writ of habeas corpus and denying a request for the appointment of counsel.

On December 17, 1998, the district court convicted appellant, pursuant to a jury verdict, of two counts of possession of a controlled substance and one count of trafficking in a controlled substance. The district court sentenced appellant to serve a term of ten to twenty-five years in the Nevada State Prison for trafficking.<sup>1</sup> This court dismissed appellant's appeal from his judgment of conviction.<sup>2</sup> The remittitur issued on August 1, 2000.

On September 29, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

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<sup>1</sup>For the possession counts, the district court imposed concurrent terms of twelve to forty-eight months. The district court suspended the sentences and placed appellant on probation for a period not to exceed twelve months. Appellant's probation was imposed to run concurrently with his prison term.

<sup>2</sup>Mora-Marín v. State, Docket No. 33554 (Order Dismissing Appeal, July 7, 2000).

State filed a motion to dismiss the petition. On November 27, 2000, the district court dismissed appellant's petition. This court affirmed the order of the district court on appeal.<sup>3</sup>

On June 3, 2003, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. That same day, appellant also filed a request for the appointment of counsel. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On July 8, 2003, the district court dismissed appellant's petition. This appeal followed.<sup>4</sup>

Appellant filed his petition almost three years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>5</sup> Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.<sup>6</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>7</sup>

In an attempt to excuse his procedural defects, appellant argued that he was raising his claims again in order to present them

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<sup>3</sup>Mora-Marin v. State, Docket No. 37124 (Order of Affirmance, October 31, 2001).

<sup>4</sup>We conclude that the district court did not abuse its discretion in denying appellant's request for the appointment of counsel. See NRS 34.750(1).

<sup>5</sup>See NRS 34.726(1).


<sup>6</sup>See NRS 34.810(1)(b)(2); NRS 34.810(2).

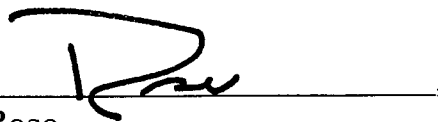
<sup>7</sup>See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).


constitutionally and in order to exhaust state remedies. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate good cause to excuse his procedural defects.<sup>8</sup> Thus, we affirm the order of the district court dismissing appellant's petition as procedurally barred.

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

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

  
Shearing, C.J.

  
Rose, J.

  
Maupin, J.

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<sup>8</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

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

<sup>10</sup>We have reviewed all documents that appellant 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 appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Steven P. Elliott, District Judge  
Eduardo Mora-Marin  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk