

IN THE SUPREME COURT OF THE STATE OF NEVADA

LLOYD STEVEN BEVERLY A/K/A
LLOYD STEVEN BEVERLY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42090

FILED

APR 22 2004

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's petition for a writ of mandamus.

On January 13, 2000, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit burglary, two counts of burglary, one count of attempted burglary and one count of possession of burglary tools. The district court sentenced appellant to serve three consecutive terms of sixty to one hundred and ninety months in the Nevada State Prison for burglary and attempted burglary.¹ This court dismissed appellant's direct appeal.² The remittitur issued on October 17, 2000. On July 18, 2001, the district court entered an amended judgment of conviction to clarify that appellant was adjudicated a habitual

¹The sentences for the conspiracy count and possession of burglary tools count, one year in the Clark County Detention Center for each count, were imposed to run concurrently with the sentences for the aforementioned counts.

²Beverly v. State, Docket No. 35536 (Order Dismissing Appeal, September 21, 2000).

criminal pursuant to NRS 207.010(a) for the burglary and attempted burglary counts.

On April 9, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On July 5, 2001, the district court denied appellant's petition. This court affirmed the order of the district court on appeal.³

On July 21, 2003, appellant filed a proper person petition for a writ of mandamus in the district court. In his petition, appellant challenged his habitual criminal adjudication. The State opposed the petition. On October 8, 2003, the district court summarily denied the petition. This appeal followed.

The minute entries indicate that the district court denied the petition because appellant's challenge to the habitual criminal adjudication was filed in "an improper vehicle." We conclude that the district court did not abuse its discretion in denying appellant's petition. The presence of an adequate legal remedy will generally preclude extraordinary relief.⁴ Appellant had an adequate legal remedy in the ordinary course of the law—a post-conviction petition for a writ of habeas corpus.⁵ Therefore, we affirm the order of the district court denying appellant's petition.

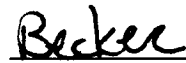
³Beverly v. State, Docket No. 38267 (Order of Affirmance, August 21, 2002).

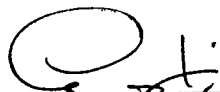
⁴See NRS 34.170.

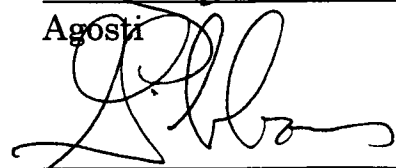
⁵See NRS 34.724. We express no opinion as to whether appellant is able satisfy the procedural requirements of NRS chapter 34 at this time.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Lee A. Gates, District Judge
Lloyd Steven Beverly
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).