

IN THE SUPREME COURT OF THE STATE OF NEVADA

TAM CONG NGUYEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42263

FILED

JUL 01 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order denying appellant Tam Cong Nguyen's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On January 12, 1999, the district court convicted Nguyen, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon. The district court sentenced Nguyen to serve a term of life in the Nevada State Prison with the possibility of parole, plus an equal and consecutive sentence for the use of a deadly weapon. This court dismissed Nguyen's direct appeal.<sup>1</sup> The remittitur issued on August 1, 2000.

On February 22, 2001, Nguyen filed a proper person petition for a writ of habeas corpus in the district court. On September 13, 2001,

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<sup>1</sup>Nguyen v. State, Docket No. 33724 (Order Dismissing Appeal, July 7, 2000).

the district court denied Nguyen's petition. This court affirmed the order of the district court on appeal.<sup>2</sup>

On February 26, 2003, Nguyen filed a second proper person petition for a writ of habeas corpus in the district court. The State opposed the petition. On May 16, 2003, the district court denied Nguyen's petition. This court affirmed the order of the district court on appeal.<sup>3</sup>

On July 8, 2003, Nguyen filed a third proper person petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Nguyen or to conduct an evidentiary hearing. On October 2, 2003, the district court summarily denied Nguyen's petition. This appeal followed.

Nguyen filed his petition more than two years after this court issued the remittitur from his direct appeal. Thus, Nguyen's petition was untimely.<sup>4</sup> Moreover, Nguyen's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.<sup>5</sup> As such, Nguyen's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>6</sup>

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<sup>2</sup>Nguyen v. State, Docket No. 38415 (Order of Affirmance, October 14, 2002).

<sup>3</sup>Nguyen v. State, Docket No. 40955 (Order of Affirmance, January 2, 2004).

<sup>4</sup>See NRS 34.726(1).

<sup>5</sup>See NRS 34.810(2).

<sup>6</sup>See NRS 34.726(1); 34.810(3).

In an attempt to excuse his procedural defects, Nguyen argued that he lacked education, did not understand the law, and did not understand the English language. Based on our review of the record on appeal, we conclude that the district court did not abuse its discretion by summarily denying Nguyen's habeas petition.<sup>7</sup> Nguyen's lack of education and understanding of the law did not constitute good cause to excuse his failure to comply with procedural rules.<sup>8</sup> The record belies Nguyen's claim that he did not understand the English language.<sup>9</sup>

In this petition, Nguyen's sole claim for relief was that the justice's court violated his due process and equal protection rights during the preliminary hearing when it failed to advise him of the consequences of not having an interpreter.<sup>10</sup> However, Nguyen failed to demonstrate that this claim could not have been presented to the trial court, raised on direct appeal, or submitted in a prior petition.<sup>11</sup> To the extent that Nguyen may have previously raised this claim,<sup>12</sup> the doctrine of law of the

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<sup>7</sup>Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989) (holding, in general, that a lower court's determination regarding the existence of good cause will not be disturbed absent a clear abuse of discretion).

<sup>8</sup>See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (stating that appellant's limited intelligence or poor assistance in framing issues will not overcome the procedural bar).

<sup>9</sup>See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

<sup>10</sup>See Ton v. State, 110 Nev. 970, 878 P.2d 986 (1994).


<sup>11</sup>See NRS 34.810(1)(b).

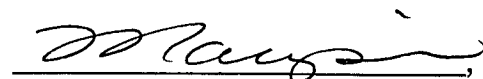
<sup>12</sup>In his first habeas petition, Nguyen claimed that appellate counsel was ineffective for failing to raise the issue of whether Nguyen was denied his constitutional right to an interpreter. On appeal, we concluded that this claim was without merit.

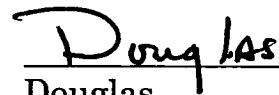
case prevents further litigation of this issue.<sup>13</sup> We conclude that Nguyen failed to establish good cause and prejudice to excuse his untimely and successive petition, and the district court properly determined that his petition was procedurally barred.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that Nguyen is not entitled to relief and that briefing and oral argument are unwarranted.<sup>14</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Maupin

 \_\_\_\_\_, J.  
Douglas

cc: Hon. Joseph T. Bonaventure, District Judge  
Tam Cong Nguyen  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>13</sup>See Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

<sup>14</sup>See Lockett v. Warden, 91 Nev. 681, 682 541 P.2d 910, 911 (1975).