

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN RALPH BASHAM,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, CRAIG
FARWELL,
Respondent.

No. 42288

FILED

JUN 25 2004

J. P. [Signature]
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order denying appellant John Basham's post-conviction petition for a writ of habeas corpus. Second Judicial District, Washoe County; Brent T. Adams, Judge.

On August 2, 1996, the district court convicted Basham, pursuant to a jury verdict, of sexual assault (count 1), battery with the intent to commit sexual assault (count 2), and dissuading a victim from reporting a crime (count 3). The district court sentenced Basham to serve a term of life in the Nevada State Prison with the possibility of parole for count 1, a term of 26 to 120 months for count 2, and a term of 19 to 48 months for count 3. The district court imposed the term in count 2 to run concurrently with the term in count 1, and the term in count 3 to run consecutively with the term in count 2. This court dismissed Basham's direct appeal.¹ The remittitur issued on December 15, 1998.

On September 19, 2003, Basham filed a proper person petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750

¹Basham v. State, Docket No. 29317 (Order Dismissing Appeal, November 24, 1998).

and 34.770, the district court declined to appoint counsel to represent Basham or to conduct an evidentiary hearing. On October 13, 2003, the district court denied Basham's petition. This appeal followed.

Basham filed his petition more than five years after this court issued the remittitur from his direct appeal. Thus, Basham's petition was untimely.² Basham's petition was procedurally barred absent a demonstration of good cause for the delay and undue prejudice.³

In an attempt to excuse his procedural defects, Basham contended that he had newly discovered exculpatory evidence which the prosecutor knew of and failed to disclose at trial.⁴ Basham claimed that his new evidence was the results from tests conducted on the bed sheets that were collected from the crime scene shortly after his arrest. Basham asserted that these test results were not previously available to him despite his diligent efforts.

Our review of the record on appeal reveals that the test results were known on or before March 18, 1996. On June 17, 1998, Basham filed a motion for production of evidence with the district court, in which he requested the test results from the bed sheets taken into evidence. The

²See NRS 34.726(1) (providing that a petition for a writ of habeas corpus must be filed within one year after this court issues its remittitur).


³See *id.*


⁴See *Hathaway v. State*, 119 Nev. ___, ___, 71 P.3d 503, 506 (2003) (stating that good cause might be demonstrated by "showing that a factual or legal basis for a claim was not reasonably available" during the statutory period for filing the petition) (quoting *Murray v. Carrier*, 477 U.S. 478, 488 (1986)).

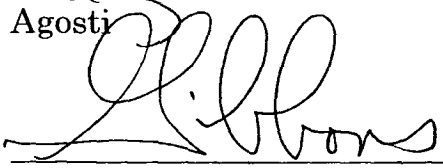
district court denied his motion as untimely.⁵ On or about July 16, 2003, Basham appears to have sent a letter to the Washoe County Sheriff's Office requesting the test results. Shortly thereafter Basham received the test results. Given the span of years between Basham's requests, we conclude that Basham's efforts were not diligent and that the basis for Basham's claim was reasonably available during the statutory period filing a habeas petition. Further, Basham failed to show that the denial of his petition on procedural grounds would constitute a fundamental miscarriage of justice.⁶ Therefore, we conclude that the district court did not err in denying Basham's petition.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Basham is not entitled to relief and that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

⁵See NRS 174.285.

⁶See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Brent T. Adams, District Judge
John Ralph Basham
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk