

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN FLOYD VOSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42307

FILED

JUL 27 2004

ORDER OF AFFIRMANCE

JANETIE 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 denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On November 27, 1996, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary, two counts of uttering a forged instrument, two counts of forgery, and one count of attempted theft. The district court sentenced appellant to serve consecutive terms totaling 128 months to 360 months in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction.¹

¹Voss v. State, Docket No. 29783 (Order Dismissing Appeal, March 11, 1999).

On March 9, 2000, appellant filed a post-conviction petition for a writ of habeas corpus. On August 9, 2001, after conducting an evidentiary hearing, the district court denied appellant's petition in part and granted appellant's petition in part.² This court affirmed the order of the district court on appeal.³

On April 14, 2003, appellant filed a proper person motion for leave to file a successive habeas corpus petition and a second post-conviction petition for a writ of habeas corpus. The district court denied appellant's motion and petition. This appeal followed.

Appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus and that petition was decided on the merits.⁴ Therefore, appellant's petition was

²The district court determined that a new sentencing hearing was appropriate. The record on appeal before this court does not contain any documents relating to the new sentencing hearing.

³Voss v. State, Docket No. 38373 (Order of Affirmance, January 17, 2002).

⁴See NRS 34.810(1)(b)(2); NRS 34.810(2).

procedurally barred absent a demonstration of good cause and actual prejudice.⁵

Appellant claimed that he had good cause because he only learned of new claims for relief when he filed a federal petition for a writ of habeas corpus and received a copy of the exhibits used during the trial—particularly the transcript for the preliminary hearing. He claimed that his review of the preliminary hearing transcript revealed a chain of evidence problem. He claimed that he could not have known about this claim with the exercise of reasonable diligence prior to the filing of the instant petition.

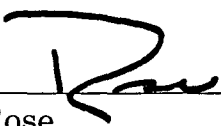
Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause to excuse his successive petition. The claims raised in the instant petition relate to the preliminary hearing, and thus, could have been raised in the prior habeas corpus petition. Appellant was present at the preliminary hearing when the alleged error occurred. Thus, his claim that he could not have known about the claim prior to receiving the transcript is without merit. Appellant failed to otherwise demonstrate

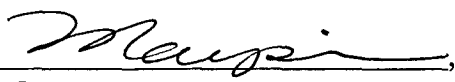
⁵See NRS 34.810(1)(b); NRS 34.810(3).

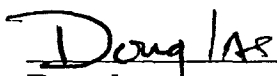
that he was unable to raise the claims earlier. Therefore, we affirm the order of the district court denying appellant's petition.

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.⁷


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

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

⁷We 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
Steven Floyd Voss
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk