

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILSON EARL LOVE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42309

FILED

JUL 01 2004

ORDER OF AFFIRMANCE

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On March 4, 1997, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery and one count of battery causing substantial bodily harm. The district court sentenced appellant to serve in the Nevada State Prison a term of twenty-six to one hundred and twenty months for robbery and a consecutive term of twelve to thirty-six months for battery. This court dismissed appellant's appeal from his judgment of conviction.¹ The remittitur issued on March 30, 1999.

On December 9, 1997, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Love v. State, Docket No. 30227 (Order Dismissing Appeal, March 4, 1999).

State opposed the petition. Appellant filed a response. On February 25, 1998, the district court denied the petition. No appeal was taken.

On August 7, 2003, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss, and appellant filed a response. 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 October 21, 2003, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition almost four and one-half years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.² Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.³ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁴

In an attempt to excuse his procedural defects, appellant argued that he was a layman at law and that he was illegally prosecuted. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate adequate cause to excuse his procedural defects.⁵

²See NRS 34.726(1).

³See NRS 34.810(1)(b)(2), (2).


⁴See NRS 34.726(1); NRS 34.810(1)(b), (3).

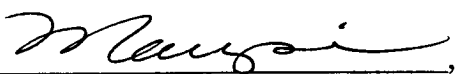
⁵See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

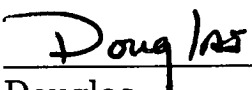
Therefore, we affirm the order of the district court denying appellant's petition.

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. John S. McGroarty, District Judge
Wilson Earl Love
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk