

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS RAUL LABORI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42591

FILED

AUG 23 2004

ORDER OF AFFIRMANCE

JANET F. LCCM
CLERK OF SUPREME COURT
BY: *J. Richards*
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; Donald M. Mosley, Judge.

On October 30, 1996, the district court convicted appellant, pursuant to a jury verdict, of first degree kidnapping with the use of a deadly weapon, two counts of sexual assault with the use of a deadly weapon, and possession of a controlled substance. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole for first degree kidnapping with the use of a deadly weapon, two consecutive terms of life with the possibility of parole for each count of sexual assault with the use of a deadly weapon, and 12 to 32 months for possession of a controlled substance.¹ The terms for each count were imposed to run concurrently.

¹The district court entered an amended judgment of conviction suspending the sentence and imposing a term of probation for the controlled substance count.

This court affirmed appellant's conviction on direct appeal.² The remittitur issued on October 31, 2000.

On April 20, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 March 6, 2002, the district court denied appellant's petition. This court affirmed the order of the district court on appeal.³

On September 2, 2003, appellant filed his second petition for a writ of habeas corpus. On December 26, 2003, the district court dismissed appellant's petition as being both untimely and successive. This appeal followed.

Appellant filed his petition approximately three years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had previously filed a proper person petition for a writ of habeas corpus on April 20, 2001.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶ Good cause

²Labori v. State, Docket No. 29551 (Order of Affirmance, October 5, 2000).

³Labori v. State, Docket No. 39279 (Order of Affirmance, December 16, 2002).

⁴See NRS 34.726(1).

⁵See NRS 34.810(1)(b), (2).

⁶See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

is some impediment external to the defense that prevented a defendant from complying with procedural rules.⁷


In an attempt to excuse his procedural defects, appellant argued that at the time of trial and the filing of his first habeas corpus petition, he did not have an adequate understanding of the English language. Specifically, appellant contended that at the time he filed his first habeas corpus petition he "did not comprehend, read, write or speak the English language in a manner to fully understand the concepts of the United States and Nevada Judicial System at trial." He further asserted that all legal research material was published only in the English language. Appellant stated that during his incarceration he learned to speak and read the English language at a level sufficient to raise issues concerning his case. However, in reviewing appellant's first habeas corpus petition, there is no indication that a language barrier prevented appellant from presenting his claims. Appellant's first petition evinced a detailed and reasoned account of his issues. Appellant also argued that he did not have sufficient access to a law library, legal materials or a law clerk. We conclude appellant did not establish that an impediment external to the defense prevented him from timely filing his petition.⁸


⁷See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁸Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that a petitioner's limited intelligence or reliance on an untrained inmate law clerk does not excuse the filing of a successive 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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰

 _____, J.
Rose

 _____, J.
Maupin

 _____, J.
Douglas

cc: Hon. Donald M. Mosley, District Judge
Luis Raul Labori
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰We deny as moot appellant's motion, of June 4, 2004, to consolidate this matter with the appeal pending in Docket No. 41207.