

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCO ANTONIO SANCHEZ A/K/A
MARCOS ANTONIO SANCHEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42720

FILED

JUL 8 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *JMB*
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; Michelle Leavitt, Judge.

On October 7, 1997, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit robbery, one count of burglary while in possession of a firearm, one count of first degree kidnapping with the use of a deadly weapon, one count of robbery with the use of a deadly weapon, and one count of grand larceny (auto). The district court sentenced appellant to serve terms totaling 225 months to 828 months in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction.¹ The remittitur issued on May 12, 1998.

On October 7, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On December 17, 1998, the district court

¹Sanchez v. State, Docket No. 31291 (Order Dismissing Appeal, April 20, 1998).

denied the petition. This court affirmed the order of the district court on appeal.²

Appellant next filed a petition for a writ of habeas corpus in the federal court. Appellant's federal petition was dismissed without prejudice for appellant to return to state court for exhaustion purposes.

On July 29, 2003, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing that the petition was untimely and successive. Moreover, the State specifically pleaded laches. 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 December 31, 2003, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than five years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Moreover, 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 Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ Further, because the State specifically pleaded laches,

²Sanchez v. State, Docket No. 33604 (Order of Affirmance, May 30, 2002).

³See NRS 34.726(1).

⁴See NRS 34.810(1)(b)(2), (2).

⁵See NRS 34.726(1); NRS 34.810(1)(b), (3).

appellant was required to overcome the presumption of prejudice to the State.⁶

In an attempt to excuse his procedural defects, appellant argued that his petition was not untimely because the time for filing a petition was tolled while his prior petition was pending. Appellant further claimed that he did not have adequate access to the law library because he was housed in a lockdown unit. Finally, he claimed that he did not have formal training in the law.

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 adequate cause to excuse his procedural defects and failed to overcome the presumption of prejudice to the State. The instant petition was not timely filed because it was not filed within one year from issuance of the remittitur from the direct appeal.⁷ More importantly, the claim raised in the instant petition could have been raised in the prior proceedings, and appellant failed to demonstrate good cause for his failure


⁶See NRS 34.800(2).


⁷There is no authority in Nevada that would permit a petitioner to toll the time for filing a second habeas petition during the time the first habeas petition is pending. Nevada's statutory scheme contemplates that only one post-conviction petition for a writ of habeas corpus will be filed absent a demonstration of good cause or in certain narrowly tailored circumstances that do not apply here. See, e.g., Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997) (recognizing that a petitioner could demonstrate good cause for a successive petition raising claims of ineffective assistance of post-conviction counsel if the petitioner was represented by appointed counsel in a prior habeas corpus proceeding and the appointment of counsel was mandatory in the prior proceeding). The fact that appellant sought federal habeas relief does not constitute adequate cause to excuse a late and successive petition in Nevada. See Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (holding that prosecution of a federal habeas corpus petition is not good cause).

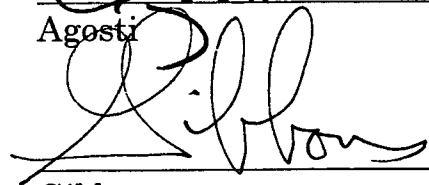
to do so.⁸ Although appellant claimed that he did not have adequate access to the law library, the instant petition and other proper person documents in the record contain legal citations. Thus, appellant failed to demonstrate that his access was constitutionally inadequate. Finally, appellant's lack of legal training is not good cause.⁹ 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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

⁸See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

⁹See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that organic brain damage and lack of legal assistance are not sufficient good cause).

¹⁰See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Michelle Leavitt, District Judge
Marco Antonio Sanchez
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk