

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRUCE ARNOLD TINER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42733

FILED

AUG 27 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOK
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Bruce Arnold Tiner's motion to vacate judgment. Seventh Judicial District Court, Eureka County; Steve L. Dobrescu, Judge.

On July 26, 1999, the district court convicted appellant, pursuant to a guilty plea, of sexual assault on a minor under sixteen years of age and statutory sexual seduction. The district court sentenced Tiner to serve a term of life in the Nevada State Prison with the possibility of parole after twenty years for the sexual assault conviction and a consecutive term of three years with the possibility of parole after one year for the sexual seduction conviction. This court affirmed Tiner's judgment of conviction and sentence.¹ The remittitur issued on November 7, 2000.

On April 18, 2002, Tiner filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State

¹Tiner v. State, Docket No. 34806 (Order of Affirmance, October 10, 2000).

opposed the petition. On May 13, 2003, the district court dismissed Tiner's petition as untimely filed.²

On October 22, 2003, Tiner filed a proper person motion to vacate judgment in the district court. The State opposed the motion. On December 23, 2003, the district court denied Tiner's motion. This appeal followed.

In his motion to vacate, Tiner contended that the district court lacked subject matter jurisdiction because of defects in the amended information. To the extent his motion can be construed as a motion to correct an illegal sentence, we conclude the district court correctly denied the motion. The information was not fatally defective.

To the extent his motion can be construed as a post-conviction petition for a writ of habeas corpus, we conclude it is procedurally barred. Tiner filed his petition approximately three years after this court issued the remittitur from his direct appeal. Thus, Tiner's petition was untimely filed.³ Moreover, Tiner's petition was successive because he had previously filed a petition for a writ of habeas corpus.⁴ Tiner's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

²See NRS 34.726(1).

³See *id.*

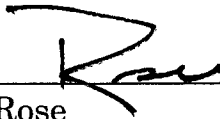
⁴See NRS 34.810(2).

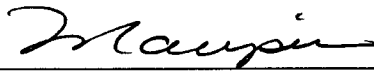
⁵See NRS 34.726(1); NRS 34.810(3).

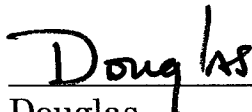
Tiner offers no explanation for his delay in filing his petition or why he did not raise his current claim in his previous petition. Therefore, we conclude Tiner has not established good cause to overcome the procedural defaults in his petition.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Tiner is not entitled to relief and that briefing and oral argument are unwarranted.⁶ Accordingly, we

ORDER this appeal DISMISSED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Steve L. Dobrescu, District Judge
Bruce Arnold Tiner
Attorney General Brian Sandoval/Carson City
Eureka County District Attorney
Eureka County Clerk

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