

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAMARR ROWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42770

FILED

AUG 30 2004

ORDER OF AFFIRMANCE

JANETTE 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. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On April 26, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of drawing and passing a check without sufficient funds in drawee bank with the intent to defraud. The district court sentenced appellant to serve a minimum term of twelve months to a maximum term of thirty-six months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period of time not to exceed three years. On August 6, 1999, the district court entered an order revoking appellant's probation and executing the sentence originally imposed. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹

On June 9, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹Rowell v. State, Docket No. 35960 (Order Dismissing Appeal, May 2, 2000).

State opposed the petition. Appellant filed a number of documents to supplement his petition. On September 1, 2000, the district court denied the petition. Appellant's subsequent appeal was docketed in this court in Docket No. 36693. On September 13, 2000, appellant filed a second post-conviction petition for a writ of habeas corpus in the district court.² On December 8, 2000, the district court denied appellant's petition. Appellant's subsequent appeal was docketed in this court in Docket No. 37210. On October 20, 2000, appellant filed a motion for amended judgment of conviction to include jail time credits, which the district court denied. Appellant did not file an appeal. On November 8, 2000, appellant filed a document labeled, "motion to obtain 109 days served under jurisdiction and sentence of probation." On November 8, 2000, appellant also filed a request for the appointment of counsel. On December 8, 2000, the district court summarily denied appellant's motion and request. Appellant's subsequent appeal was docketed in this court in Docket No. 37242. This court affirmed the orders of the district court denying appellant's habeas corpus petitions and dismissed the appeal from the motions.³

On November 19, 2003, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. On November 21, 2003, December 1, 2003, December 26, 2003, and January 12, 2004, appellant filed amended petitions. The State filed an opposition. On

²Appellant labeled his petition a "petition for writ of habeas corpus (post-conviction) (re-amended)."

³Rowell v. State, Docket Nos. 36693, 37210, 37242 (Order of Affirmance and Dismissing Appeal and Limited Remand for Correction of Judgment of Conviction, April 10, 2001).

February 5, 2004, the district court denied the petitions. This appeal followed.

Appellant filed his petition more than four years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was an abuse of the writ because he had previously filed several post-convictions petitions.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶

In an attempt to excuse his procedural defects, appellant argued that he was deprived of a direct appeal without his consent due to the ineffective assistance of counsel. Appellant claimed that this amounted to a constitutional deprivation of the right to an attorney.

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. A claim that a petitioner was deprived of a direct appeal does not constitute good cause to excuse an untimely and successive petition.⁷ Appellant's appeal deprivation claim could have been raised in a timely petition, and appellant failed to demonstrate good cause for his failure to do so.⁸ Therefore, we affirm the order of the district court.

⁴See NRS 34.726(1).

⁵See NRS 34.810(2).


⁶See NRS 34.726(1); NRS 34.810(3).


⁷See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

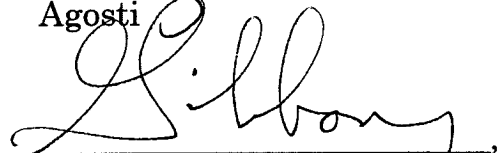
⁸See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

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.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Lee A. Gates, District Judge
Lamarr Rowell
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

¹⁰We 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.