

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM EDWARD BRANHAM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45532

FILED

NOV 10 2005

ORDER OF AFFIRMANCE

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On April 14, 1993, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison without the possibility of parole. This court dismissed appellant's appeal from his judgment of conviction.¹ The remittitur issued on January 6, 1997.

On December 12, 1997, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to assist appellant. On February 23, 1999, the district court denied the petition. This court dismissed the subsequent appeal.²

¹Branham v. State, Docket Nos. 24478, 24648 (Order Dismissing Appeals, December 18, 1996).

²Branham v. State, Docket Nos. 33830, 33831 (Order Dismissing Appeals, February 15, 2000).

In July of 2000, appellant submitted a petition for a writ of habeas corpus in federal court. On September 26, 2002, the federal district court dismissed the petition with prejudice due to the petition being untimely filed. The Court of Appeals for the Ninth Circuit affirmed the federal district court's order. The United States Supreme Court denied a petition for a writ of certiorari.

On February 14, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 June 17, 2005, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than eight 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 and had considered on the merits a post-conviction petition for a writ of habeas corpus.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

In an attempt to excuse his procedural defects, appellant argued that his post-conviction counsel was ineffective. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Appellant did not have the right to counsel at the time he filed his first petition, and therefore he did not have

³See NRS 34.726(1).

⁴See NRS 34.810(1)(b)(2); NRS 34.810(2).

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

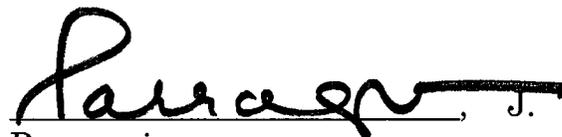
the right to the effective assistance of counsel in that proceeding.⁶ "[H]ence, 'good cause' cannot be shown based on an ineffectiveness of post-conviction counsel claim."⁷ Therefore, we affirm the order of the district court denying appellant's petition.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹


_____, J.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

⁶See NRS 34.750; McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996); see also Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997).

⁷McKague, 112 Nev. at 165, 912 P.2d at 258.

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We 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. Steven P. Elliott, District Judge
William Edward Branham
Attorney General
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk