

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID LANI,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 51318

FILED

MAY 14 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing appellant David Lani's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

On December 14, 1979, the district court convicted appellant, pursuant to a guilty plea, of one count of first-degree murder. The district court sentenced appellant to serve in the Nevada State Prison a term of life without the possibility of parole. After certification to the district court, the district court on December 14, 1979, convicted appellant, pursuant to a guilty plea, of robbery with the use of a deadly weapon. The district court sentenced appellant to serve a term 15 years in the Nevada State Prison, plus an equal and consecutive term for the use of a deadly weapon. The term for the robbery count was to be served consecutively to the term for the murder. On August 14, 1996, this court dismissed appellant's belated direct appeal for lack of jurisdiction. Lani v. State, Docket No. 28667 (Order Dismissing Appeal, August 14, 1996). The remittitur issued on September 4, 1996.

On March 6, 1997, appellant filed in the district court a motion to correct an illegal sentence. The State opposed the motion. On May 13, 1997, the district court denied appellant's motion. This court dismissed appellant's appeal. Lani v. State, (Order Dismissing Appeal, June 23, 1998).

On August 25, 1997, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. On April 8, 1998, without appointing counsel or conducting an evidentiary hearing, the district court denied appellant's petition. This court dismissed appellant's appeal. Lani v. State, (Order Dismissing Appeal, March 10, 1999).

On September 5, 2006, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. On January 4, 2008, appellant filed a supplemental petition with the aid of counsel. The State opposed the petition. Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On February 25, 2008, the district court dismissed the petition as procedurally barred. This appeal follows.

Appellant was initially charged with first-degree murder, robbery, and kidnapping on the same indictment. Appellant claims that he was under the age of 18 and he had not been certified to the district court on the underlying charge of robbery when the district court accepted his guilty plea on the charge of felony murder. Appellant claims that the indictment was invalid and, because it contained the robbery count and a kidnapping count prior to the certification, the district court did not have jurisdiction to accept his guilty plea.

Appellant filed his petition more than 26 years after the judgment of conviction was entered. Thus, appellant's petition was

untimely filed. See NRS 34.726(1); *Dickerson v. State*, 114 Nev. 1084, 967 P.2d 1132 (1998).¹ Moreover, appellant's petition constituted an abuse of the writ as his claims could have been raised in his previous post-conviction petition for a writ of habeas corpus. See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(3).

Appellant claims that the district court erred in dismissing his petition as procedurally barred because jurisdictional claims may be brought at any time.

Even assuming, without deciding, that a jurisdictional challenge can be raised in an untimely petition and this satisfies the good cause requirement, appellant fails to demonstrate any prejudice by the dismissal of this petition. Appellant's claim that the district court was without jurisdiction to accept his guilty plea is patently without merit. In 1979, NRS 62.040(c)(1) provided that the juvenile court did not have jurisdiction over the charge of murder. 1979 Nev. Stat., ch. 338, § 6, at 501-02. Thus, appellant was properly before the district court on the murder charge. A juvenile does not need to be certified as an adult on the underlying crime for a charge of a felony murder. *Elvik v. State*, 114 Nev. 883, 894, 965 P.2d 281, 288 (1998) (citing *Shaw v. State*, 104 Nev. 100, 102-03, 753 P.2d 888, 889 (1988), overruled on other grounds by *Alford v. State*, 111 Nev. 1409, 906 P.2d 714 (1995)). More importantly, appellant, when he entered his plea, agreed that he had participated "in the killing of a human being and by willful and premeditated murder, and also by lying


¹We note that the petition was filed more than 11 years after the effective date of NRS 34.726. See 1991 Nev. Stat., ch. 44, § 5, at 75-6.


in wait.” As such, appellant’s guilty plea on first-degree murder was not dependent upon the underlying charge of robbery and appellant fails to demonstrate that he was not properly before the district court. Therefore, the district court did not err in dismissing the petition as procedurally barred.²

Accordingly, having considered Lani’s contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Cherry

 _____, J.
Saitta

 _____, J.
Gibbons

²Appellant’s claim that the indictment was invalid is not a jurisdictional challenge and is subject to the procedural bars. Appellant failed to demonstrate good cause and prejudice for failing to raise a timely challenge to the indictment, and therefore, the district court did not err in dismissing this claim. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

cc: Hon. Patrick Flanagan, District Judge
Jeffrey S. Blanck
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk