

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL LAMAR WESLEY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34766

**FILED**

MAY 30 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.

On June 24, 1985, the district court convicted appellant, pursuant to a guilty plea, of murder with the use of a deadly weapon and sentenced appellant to two consecutive terms of life in prison with the possibility of parole. Appellant did not pursue a direct appeal.

On October 11, 1991, appellant filed a petition for post-conviction relief. On October 15, 1991, the district court denied the petition as untimely. Appellant pursued a direct appeal, which this court dismissed. See Wesley v. State, Docket No. 22937 (Order Dismissing Appeal, March 25, 1992).

On April 24, 1995, appellant filed a proper person motion to withdraw guilty plea. On May 26, 1995, the district court denied the motion. Appellant did not pursue a direct appeal.

On August 27, 1995, appellant filed a motion to modify sentence and to correct an illegal sentence. The district court denied the motion on September 29, 1995. Appellant did not pursue a direct appeal.

On September 12, 1996, appellant filed a motion to correct and issue a new presentence report. The district court denied the motion on October 1, 1996. This court dismissed appellant's direct appeal. See Wesley v. State, Docket No. 27776 (Order Dismissing Appeal, May 6, 1998).


On March 25, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus. Appellant subsequently retained attorney David Schieck to represent him in the post-conviction proceedings. The district court denied appellant's petition on August 10, 1999. This timely appeal followed.

Appellant's sole contention is that his sentence was improperly enhanced because the district court failed to make an independent determination that appellant had used a deadly weapon. Appellant contends that the enhancement was improper because an accused cannot stipulate to a status. We conclude that appellant is not entitled to relief.

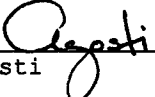
Appellant filed his habeas corpus petition more than thirteen years after entry of the judgment of conviction. Thus, appellant's petition was untimely. See NRS 34.726(1) (providing that petition must be filed within one year after entry of judgment of conviction or issuance of remittitur on direct appeal if direct appeal is taken). Moreover, appellant's habeas corpus petition was successive because he previously filed a petition for post-conviction relief. See NRS 34.810(2) (stating that successive petition must be dismissed if petition raises new grounds and failure to assert those grounds earlier is determined to be abuse of writ). Thus, appellant's petition was procedurally barred absent a showing of good cause and prejudice. See NRS 34.726(1); NRS 34.810(3).

In an attempt to demonstrate good cause, appellant contends that he is unlearned in the law and was unable to obtain the assistance of an inmate law clerk. These contentions do not constitute good cause. See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that appellant's limited intelligence or poor assistance in framing issues did not overcome procedural bar). Moreover, we conclude that appellant cannot demonstrate actual prejudice as his contention lacks merit. Appellant did not stipulate to a status in contravention of McNulty v. State, 108 Nev. 179, 826 P.2d 567 (1992), or Staley v. State, 106 Nev. 75, 787 P.2d 396 (1990); rather, appellant admitted to the conduct of using a deadly weapon in the commission of the charged offense. For these reasons, we conclude that the district court did not err in denying appellant's post-conviction petition. Accordingly, we

ORDER this appeal dismissed.<sup>1</sup>

 \_\_\_\_\_, C.J.  
Rose

 \_\_\_\_\_, J.  
Young

 \_\_\_\_\_, J.  
Agosti

cc: Hon. Jeffrey D. Sobel, District Judge  
Attorney General  
Clark County District Attorney  
David M. Schieck  
Clark County Clerk

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<sup>1</sup>To the extent that appellant contends that the issue raised in this appeal could be addressed by the district court at any time pursuant to NRS 176.555 because the sentence is illegal, we disagree. A motion to correct an illegal sentence addresses "only the facial legality of a sentence." Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). The issue raised by appellant does not implicate the facial legality of the sentence.