

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS HOUSTON MURRAY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41101

FILED

FEB 19 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a district court order dismissing appellant Thomas Murray, Jr.'s post-conviction petition for a writ of habeas corpus.

On May 3, 1999, the district court convicted Murray, pursuant to a guilty plea, of one count of escape by a prisoner (Count I), and one count of grand larceny of a motor vehicle (Count II). The district court sentenced Murray to serve a term of 90 months in the Nevada State Prison with the possibility of parole in 36 months for Count I. The district court sentenced Murray to serve a concurrent term of 48 months with the possibility of parole in 12 months for Count II. This court dismissed Murray's direct appeal from his judgment of conviction.¹ The remittitur issued on January 5, 2000.

On November 20, 2000, Murray filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed an opposition. Thereafter, on May 14, 2001, Murray filed an amended proper person post-conviction petition for a writ of habeas corpus in the district court. On July 12, 2002, the district court dismissed Murray's petitions. No appeal was taken.

¹Murray v. State, Docket No. 34309 (Order Dismissing Appeal, December 10, 1999).

On October 22, 2002, Murray filed another 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 Murray or to conduct an evidentiary hearing. On February 20, 2003, the district court issued an order dismissing Murray's petition, specifically finding that Murray's petition was successive and constituted an abuse of the writ. This appeal followed.

Murray's petition was untimely because it was filed more than two years after the remittitur issued from his direct appeal.² Murray's petition was also successive because he had previously filed a post-conviction petition for a writ of habeas corpus in the district court.³ Thus, Murray's petition was procedurally barred absent a showing of good cause and undue prejudice.⁴

In an attempt to excuse the procedural defects in his petition, Murray contended that his appellate counsel was ineffective and, therefore, he was unable to raise many of the allegations in his petition on direct appeal. Murray's allegation, however, failed to establish good cause to explain why his claims of ineffective assistance of appellate counsel were not timely raised in his previous petitions for writs of habeas corpus.⁵

²See NRS 34.726(1); Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998) (holding that the one-year period for filing a post-conviction petition for a writ of habeas corpus begins to run when this court issues the remittitur from a timely direct appeal from the judgment of conviction).

³See NRS 34.810(2).

⁴See NRS 34.726(1); NRS 34.810(3).

⁵See Hathaway v. State, 119 Nev. ___, ___, 71 P.3d 503, 506 (2003) (stating that an allegation of ineffective assistance of counsel by itself does not establish good cause to excuse an otherwise untimely petition).

Therefore, Murray failed to overcome the procedural bars to his petition with this argument.

Murray also contended that his petition should be excused from being procedurally barred because the Warden of the Nevada State Prison in Ely, E.K. McDaniel, intentionally gave him false and misleading information concerning post-conviction proceedings. This allegation failed to establish good cause.⁶ Other than raising this allegation in a general manner, Murray failed to support his allegation with any specific facts.⁷ Therefore, this argument also failed to overcome the procedural bars to Murray's petition.

Finally, Murray contended that his petition should not be procedurally barred because the district court refused to appoint counsel to assist him with his prior petitions. However, a petitioner is not entitled to the appointment of counsel in post-conviction proceedings.⁸ Therefore, Murray failed to overcome the procedural bars to his petition with this argument.

We recognize that after the district court dismissed Murray's petition on procedural grounds, the district court proceeded to address the merits of the allegations raised in Murray's petition as an alternative basis to dismiss the petition. Given our conclusion that Murray failed to excuse the procedural defects in his petition, and also failed to show that

⁶See also Pellegrini v. State, 117 Nev. 860, 886, 34 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994) (stating that good cause is established by showing an impediment external to the defense prevented a petitioner from raising allegations in a timely petition).

⁷See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).


⁸See McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996); see also NRS 34.750.

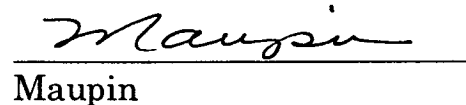
the dismissal of his petition on procedural grounds would result in a fundamental miscarriage of justice,⁹ we decline to address the merits of the allegations raised in his petition.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Murray is not entitled to the relief requested and that briefing and oral argument are unwarranted.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 C.J.
Shearing

 J.
Rose

 J.
Maupin

cc: Hon. Steve L. Dobrescu, District Judge
Thomas Houston Murray Jr.
Attorney General Brian Sandoval/Carson City
Lincoln County District Attorney
Lincoln County Clerk

⁹See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

¹⁰See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).