

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES E. CROSS,
Appellant,
vs.
WARDEN, HIGH DESERT STATE
PRISON, J. M. SCHOMIG,
Respondent.

No. 42931

FILED

AUG 26 2004

JANET M. BLOOM
CLERK OF THE SUPREME COURT
J. Richards

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from an order of the district court denying appellant James E. Cross' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On July 15, 1998, the district court convicted Cross, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon, attempted murder with the use of a deadly weapon and stop required on signal of police officer. The district court sentenced Cross to serve a life term in the Nevada State Prison without the possibility of parole for the first-degree murder conviction and a consecutive life term without parole eligibility for the deadly weapon enhancement. The district court also sentenced Cross to a consecutive term of 190 months with a minimum parole eligibility after 72 months for the attempted murder conviction, with an identical sentence for the deadly weapon enhancement. Finally, the district court sentenced Cross to a term of 60 months with parole eligibility after 24 months for the stop required on signal of police officer conviction, to run concurrent with the attempted murder conviction. This

court dismissed the direct appeal.¹ The remittitur issued on September 6, 2000.

On November 26, 2003, Cross filed a proper person post-conviction petition for a writ of habeas corpus in the district court and an amended habeas corpus petition. The State opposed the petitions. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Cross or to conduct an evidentiary hearing. On February 24, 2004, the district court denied Cross' petition as untimely filed and successive. This appeal followed.

The record reveals that on November 2, 2000, Cross filed a petition for a writ of habeas corpus in the district court. On November 21, 2000, the district court orally denied Cross' petition. However, the district court never entered a written order denying the petition. NRAP 4(b)(2) provides that "[t]he district court judge shall enter a written judgment or order finally resolving any post-conviction matter within twenty (20) days after the district court judge's oral pronouncement of a final decision in such a matter."

We conclude the district court erred in denying Cross' second habeas corpus petition as procedurally barred. Because Cross' first timely habeas corpus petition was never resolved on the merits due to the district court's omission in entering a written order, we conclude that the district court erred in denying Cross' second petition.² We reverse the order of the

¹Cross v. State, Docket No. 32533 (Order Dismissing Appeal, August 11, 2000).

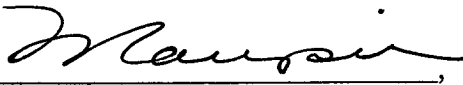
²Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).


district court denying Cross' second petition. We remand this matter to the district court to consider on the merits Cross' November 2, 2000, habeas corpus petition and to resolve whether, in its discretion, Cross should be permitted to file his November 26, 2003, amended petition.³ Upon resolving and entering a written order regarding these matters the district court shall consider Cross' second habeas corpus petition.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter.⁴ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

³See NRS 34.750(5).

⁴Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Donald M. Mosley, District Judge
James E. Cross
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk