

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN FOX,
Appellant,
vs.
WARDEN, SOUTHERN DESERT
CORRECTIONAL CENTER, ROBERT
HILDRETH,
Respondent.

No. 43030

FILED

SEP 17 2004

ORDER OF AFFIRMANCE

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

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

On December 11, 2002, the district court convicted Fox, pursuant to a guilty plea, of aggravated stalking and burglary. The district court sentenced Fox to serve a term of 72 to 180 months in the Nevada State Prison for the stalking count, and a concurrent term of 16 to 72 months for the burglary count. Fox did not file a direct appeal.

On September 15, 2003, Fox filed a motion to withdraw his guilty plea in the district court. In his motion, Fox raised several claims of ineffective assistance of trial counsel, and argued that his guilty plea was not knowingly and voluntarily entered. On October 3, 2003, the district court denied Fox's motion. This court affirmed the order of the district court.¹

¹Fox v. State, Docket No. 42179 (Order of Affirmance, September 1, 2004).

On December 10, 2003, Fox filed a motion to correct an illegal sentence in the district court. On January 9, 2004, the district court denied Fox's motion. This court dismissed Fox's untimely appeal for lack of jurisdiction.²

On December 15, 2003, Fox filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On January 26, 2004, Fox filed an amended petition. The State filed an opposition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Fox or to conduct an evidentiary hearing. On May 14, 2004, the district court denied Fox's petition. This appeal followed.

Fox filed his petition more than one year after entry of his judgment of conviction. Thus, his petition was untimely filed.³ Fox's petition was procedurally barred absent a demonstration of good cause and prejudice.⁴

Fox did not attempt to demonstrate cause for his delay in filing the instant petition; rather, he argued that his petition was timely because he filed a motion to withdraw his guilty plea in the district court on September 15, 2003. Fox's motion to withdraw his guilty plea was not a direct appeal, however.⁵ Consequently, the period for filing a post-conviction petition for a writ of habeas corpus began to run after the entry

²Fox v. State, Docket No. 43206 (Order Dismissing Appeal, June 9, 2004).

³See NRS 34.726(1).

⁴See id.


⁵Cf. NRAP 4(b)(1).

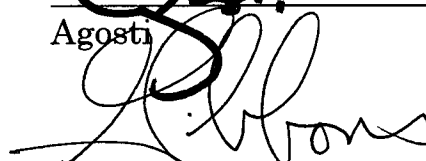
of his judgment of conviction.⁶ Further, the majority of the claims Fox raised in the instant petition were previously considered and rejected by this court in his motion to withdraw his guilty plea.⁷ To the extent that Fox raised any new allegations, we note that he failed to establish that he was unable to present these claims in a timely petition. Because Fox did not demonstrate good cause to excuse his untimely petition, the district court did not err in concluding that his petition was procedurally barred.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Fox is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

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

⁶See Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

⁷See Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

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