

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUSSELL COHEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43143

FILED

OCT 07 2004

ORDER OF AFFIRMANCE

JANETTE M. PLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

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

On July 20, 2000, the district court convicted appellant, pursuant to a guilty plea, of one count each of sexual assault on a minor under fourteen years of age, sexual assault on a minor under sixteen years of age, and use of a minor in producing pornography. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after 20 years for the sexual assaults and a consecutive term of life with the possibility of parole after 5 years for production of pornography. This court dismissed appellant's appeal from his judgment of conviction and sentence and denied appellant's petition for rehearing.<sup>1</sup> The remittitur issued on October 25, 2001.

On January 15, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court.

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<sup>1</sup>Cohen v. State, Docket No. 36562 (Order of Affirmance, June 27, 2001), (Order Denying Rehearing, October 9, 2001).

Appellant also filed several supplements to the petition. The State opposed and moved to dismiss the petition. The district court appointed counsel to represent appellant for the purpose of reviewing all pending motions.<sup>2</sup> Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On March 23, 2004, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition 82 days beyond the one-year statutory time period.<sup>3</sup> Appellant's petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.<sup>4</sup> Good cause must be an impediment external to the defense.<sup>5</sup>

In an attempt to demonstrate cause for the delay, appellant argued that he filed a petition for habeas corpus relief in federal court and was not aware that he needed to file a petition in the State court. Appellant further argued that his petition was timely because the statute of limitations for filing the petition was tolled for 90 days pursuant to 28 U.S.C. § 2244(d)(1)(A).

Based upon our review of the record on appeal, we conclude that the district court properly determined that appellant failed to demonstrate adequate cause to excuse his delay. Appellant failed to demonstrate that an impediment external to the defense prevented him from filing a timely petition. Ignorance of legal procedures is not an impediment external to the defense.<sup>6</sup> Further, pursuit of federal habeas

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<sup>2</sup>See NRS 34.750.

<sup>3</sup>See NRS 34.726(1).

<sup>4</sup>See id.; Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002).

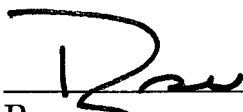
<sup>5</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).


<sup>6</sup>See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

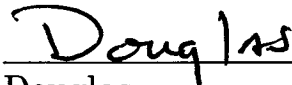
corpus relief does not constitute good cause to excuse the filing of a petition for post-conviction relief beyond the one-year statutory time period.<sup>7</sup> Finally, petitions for post-conviction relief in this State are governed by NRS 34.726 and are not subject to the 90-day tolling provision of 28 U.S.C. § 2244(d)(1)(A). Appellant failed to demonstrate good cause for the delay in filing his petition. Therefore, we affirm the order of the district court denying appellant's petition.

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

ORDER the judgment of the district court AFFIRMED.<sup>9</sup>

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

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

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<sup>7</sup>Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989).

<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>9</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted.

cc: Hon. Nancy M. Saitta, District Judge  
Russell Cohen  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk