

IN THE SUPREME COURT OF THE STATE OF NEVADA


STEVE COLEMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43379

FILED

NOV 03 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

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

On August 4, 1999, the district court convicted Coleman, pursuant to a guilty plea, of lewdness with a child under the age of 14 years. The district court sentenced Coleman to serve a term of 48 to 120 months in the Nevada State Prison. The district court suspended Coleman's sentence and placed him on probation for a fixed period of five years. Coleman did not file a direct appeal.

On January 18, 2002, the district court entered an order revoking Coleman's probation and imposed the original sentence of 48 to 120 months confinement, with 65 days' credit for time served.

On February 23, 2004, Coleman filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Coleman or to

conduct an evidentiary hearing. On July 26, 2004, the district court denied Coleman's petition. This appeal followed.

Coleman filed his petition more than four years after entry of the judgment of conviction. Thus, Coleman's petition was untimely filed.¹ His petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.²

In an attempt to demonstrate good cause for the delay, Coleman argued that he discovered exculpatory evidence after pleading guilty. However, we conclude that Coleman failed to demonstrate that such evidence was not reasonably available during the one-year time period within which to file his habeas corpus petition.³ Accordingly, we conclude that Coleman failed to demonstrate good cause to excuse the untimely filing of his petition based on newly discovered evidence.

Coleman also argued that he established good cause for the late filing of his petition because his attorney failed to advise him of his right to appeal. However, an allegation that he was deprived of a direct appeal by his counsel's failure to advise him of such a right does not constitute good cause to excuse Coleman's untimely filing of his petition.⁴

¹See NRS 34.726(1).

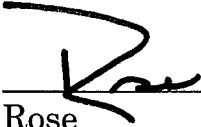
²See *id.*


³See *Hathaway v. State*, 119 Nev. 248, 71 P.3d 503 (2003).

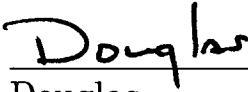
⁴See *Harris v. Warden*, 114 Nev. 956, 960, 964 P.2d 785, 788 (1998).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Coleman is not entitled to relief and that briefing and oral argument are unwarranted.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Lee A. Gates, District Judge
Steve Coleman
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have reviewed all documents that Coleman 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. To the extent that Coleman has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.