

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN MARGARET DESANDO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43504

FILED

OCT 27 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

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

On April 9, 2001, the district court convicted Desando, pursuant to a jury verdict, of possession of stolen property. The district court sentenced Desando to serve a term of 12 to 30 months in the Nevada State Prison. The district court suspended the sentence and placed Desando on probation for a term not to exceed 18 months. This court affirmed Desando's judgment of conviction and sentence.<sup>1</sup> The remittitur issued on December 17, 2002.

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<sup>1</sup>Desando v. State, Docket No. 37726 (Order of Affirmance, November 21, 2002).

On December 22, 2003, Desando filed a proper person post-conviction petition for a writ of habeas corpus in the district court.<sup>2</sup> The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Desando or to conduct an evidentiary hearing. On April 23, 2004, the district court denied Desando's petition. This appeal followed.

Desando filed her petition more than one year after this court issued the remittitur from her direct appeal. Thus, Desando's petition was untimely filed.<sup>3</sup> Desando's petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.<sup>4</sup>

In an attempt to demonstrate good cause for the delay, Desando argued that she "recently" discovered the identity of the person who committed the crime of which she was convicted. However, we conclude that Desando failed to demonstrate that such evidence was not reasonably available during the one-year time period within which to file her habeas corpus petition. Accordingly we conclude that Desando failed to demonstrate good cause to excuse the untimely filing of her petition.

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<sup>2</sup>Two other date stamps appear on the face of Desando's petition. The date stamps reflect that the justice court received her petition on December 18, 2003, and the county court received her petition on December 19, 2003. However, even if we were to consider these dates, Desando's petition was still untimely filed as she was required to file her petition no later than December 17, 2003.

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


<sup>4</sup>See id.

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

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, C.J.  
Shearing

 \_\_\_\_\_, J.  
Becker

 \_\_\_\_\_, J.  
Agosti

cc: Hon. Michelle Leavitt, District Judge  
Susan Margaret Desando  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).