

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DILLON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43610

**FILED**

NOV 15 2004

ORDER OF AFFIRMANCE

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

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

Appellant was originally convicted, pursuant to a guilty plea, of three counts of attempted sexual assault of a minor under the age of 16. The district court sentenced appellant to three terms of 48 to 120 months, two of them running consecutively and one concurrently. The judgment of conviction was entered on December 28, 2000. Appellant did not file a direct appeal.

On October 6, 2003, appellant filed a proper person petition for a writ of habeas corpus. The State filed a motion to dismiss the petition, arguing that it was untimely.<sup>1</sup> The district court appointed counsel for appellant to address the issue of whether good cause and

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<sup>1</sup>See NRS 34.726(1) (requiring that a petition be filed within 1 year after the entry of the judgment of conviction if no direct appeal is taken).

prejudice existed to excuse the untimeliness.<sup>2</sup> The district court ultimately determined that appellant had not overcome the procedural bar and dismissed the petition.

Appellant contends that the district court erred by dismissing the petition. Appellant first argues that he demonstrated good cause for the untimeliness because he is mentally retarded and did not have the assistance of counsel in filing the petition. We conclude that appellant failed to demonstrate that "some impediment external to the defense" was the cause for the delay in filing his petition.<sup>3</sup>

Appellant next argues that he should be allowed to file an untimely petition to prevent a fundamental miscarriage of justice. Specifically, appellant argues that he is actually innocent of the crimes to which he pleaded because of insanity. However, appellant failed to establish either (1) that he was in a delusional state such that he could not know or understand the nature of his act or (2) that his delusion was such that he could not appreciate the wrongfulness of his conduct.<sup>4</sup> We

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<sup>2</sup>See NRS 34.726(1)(a),(b).

<sup>3</sup>See Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998) (clarified by Hathaway v. State 119 Nev. 248, 71 P.3d 503 (2003)); see also Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988); abrogated on other grounds by Nika v. State, 120 Nev. \_\_\_, 97 P.3d 1140 (2004).

<sup>4</sup>Finger v. State, 117 Nev. 548, 577, 27 P.3d 66, 85 (2001) (stating the M'Naghten test for legal insanity followed in Nevada); cert. denied, 534 U.S. 1127 (2002).

therefore conclude that the district court did not err by dismissing appellant's untimely petition.

Having considered appellant's arguments and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.  
Becker

Agosti, J.  
Agosti

Gibbons, J.  
Gibbons

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