

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES MICHAEL MAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43985

FILED

NOV 29 2004

ORDER OF AFFIRMANCE

JANETTE M. SLOOM
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 Charles Michael May's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On June 3, 1998, the district court convicted May, pursuant to a jury verdict, of second-degree murder with the use of a deadly weapon and six counts of uttering a forged instrument. The district court sentenced May to serve life a term in the Nevada State Prison with the possibility of parole after ten years, plus an equal and consecutive term for the deadly weapon enhancement. The district court also sentenced May to six consecutive terms of 19 to 48 months for the uttering a forged instrument convictions. This court dismissed May's appeal from his judgment of conviction and sentence.¹ The remittitur issued on April 25, 2000.

¹May v. State, Docket No. 32614 (Order Dismissing Appeal, March 29, 2000).

On July 7, 2004, May 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 May or to conduct an evidentiary hearing. On September 9, 2004, the district court denied May's petition as untimely filed. This appeal followed.

May filed his petition more than four years after this court issued the remittitur from his direct appeal. Thus, May's petition was untimely filed.² May's petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.³

In an attempt to demonstrate good cause for the delay, May argued that his counsel failed to inform him that his appeal had been dismissed. However, to demonstrate good cause, May must show that an impediment external to the defense prevented him from complying with the procedural default rules.⁴ The record reveals that May knew in April 2003 that his direct appeal had been dismissed in 2000, yet he waited more than 16 months to file his petition. Based upon our review of the record on appeal, we conclude that May failed to demonstrate good cause to excuse the late filing of his petition.

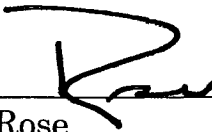
²See NRS 34.726(1).


³See id.

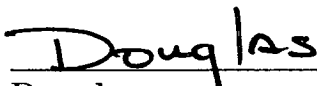
⁴See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that May 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. Janet J. Berry, District Judge
Charles Michael May
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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

⁶We have reviewed all documents that May 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 May 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.