

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 45157

**FILED**

**MAY 02 2006**

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Steve Coleman's first post-conviction petition for a writ of habeas corpus, and dismissing Coleman's second post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

Coleman was bound over to the district court and charged by way of a criminal information with fourteen counts of sexual assault of a minor under fourteen years of age, twenty-six counts of lewdness with a minor under fourteen years of age, two counts of sexual assault of a minor under sixteen years of age, and one count each of attempted sexual assault of a minor under fourteen years of age and attempted lewdness with a minor under fourteen years of age. On April 30, 2002, Coleman was convicted, pursuant to a guilty plea, of two counts of lewdness with a minor under fourteen years of age, and one count each of sexual assault of a minor under fourteen years of age and sexual assault of a minor under sixteen years of age. The district court sentenced Coleman to serve multiple concurrent and consecutive life sentences with the possibility of parole after thirty years. This court dismissed Coleman's untimely direct

appeal from the judgment of conviction and sentence due to a lack of jurisdiction.<sup>1</sup>

On October 29, 2002, Coleman filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed counsel to represent Coleman, and counsel filed a supplement to the petition. The State opposed Coleman's petition. The district court declined to conduct an evidentiary hearing and on August 7, 2003, entered an order denying Coleman's petition. On appeal, this court rejected all but one of Coleman's claims, and remanded the matter to the district court with instructions to conduct an evidentiary hearing on the sole issue of whether Coleman's trial counsel failed to file a direct appeal after Coleman expressed a desire to appeal.<sup>2</sup>

On July 13, 2004, Coleman filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition, arguing that it was untimely and successive. The district court conducted an evidentiary hearing and on March 28, 2005, entered an order denying Coleman's first habeas petition and dismissing his second habeas petition. This timely appeal followed.

First, Coleman contends that the district court erred in denying his first petition and finding that he was not deprived of his right

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<sup>1</sup>Coleman v. State, Docket No. 39776 (Order Dismissing Appeal, July 25, 2002).

<sup>2</sup>Coleman v. State, Docket No. 42051 (Order of Affirmance in Part and Reversal and Remand in Part, June 4, 2004).

to a direct appeal.<sup>3</sup> Coleman claims that he asked counsel to file a direct appeal, and that his “account is the most accurate.” We disagree.

At the evidentiary hearing on the petition, Coleman’s former counsel, Thomas Ericsson, testified that he had “a fairly good recollection of the general discussions” he had with Coleman, and that he had no recollection of Coleman requesting a direct appeal. Ericsson also testified that there were no discussions with Coleman about filing a motion to withdraw his guilty plea, and that he was not aware at the time of any nonfrivolous appellate issues. The district court determined that Ericsson’s testimony was more credible, and found that Coleman did not specifically ask Ericsson to file a direct appeal. Coleman has not demonstrated that the district court’s findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Coleman has not demonstrated that the district court erred as a matter of law. Therefore, we conclude that the district court did not err in rejecting this claim.

Finally, Coleman contends that the district court erred in dismissing his second post-conviction petition and finding that it was procedurally barred. Coleman argues for the first time on appeal that his second petition was not untimely and successive and was meant to amend his first petition with “cognizable claims that had risen during the pendency of the matter.” We disagree.

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<sup>3</sup>See Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994) (“an attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction”).

Application of the procedural default rules to post-conviction petitions for writs of habeas corpus is mandatory.<sup>4</sup> The Nevada Legislature “never intended for petitioners to have multiple opportunities to obtain post-conviction relief absent extraordinary circumstances.”<sup>5</sup> In this case, Coleman’s petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.<sup>6</sup> Further, Coleman’s petition was filed more than one year after the entry of his judgment of conviction, and thus, was untimely.<sup>7</sup> Therefore, Coleman’s petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>8</sup>

Good cause is established by showing that an impediment external to the defense prevented a petitioner from filing a timely petition.<sup>9</sup> Without good cause for the delay and prejudice, this court will excuse the procedural bar only if the petitioner can demonstrate that a failure to consider his claims would result in a fundamental miscarriage of

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<sup>4</sup>State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003); see also State v. Dist. Ct. (Riker), 121 Nev. \_\_\_, 112 P.3d 1070 (2005).

<sup>5</sup>Pellegrini v. State, 117 Nev. 860, 876, 34 P.3d 519, 530 (2001).

<sup>6</sup>See NRS 34.810(2).

<sup>7</sup>See NRS 34.726(1).

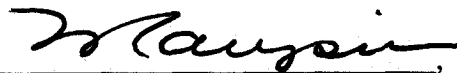
<sup>8</sup>See id.; NRS 34.810(3).

<sup>9</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 Murray v. Carrier, 477 U.S. 478, 488 (1986).

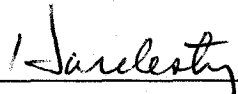
justice.<sup>10</sup> Coleman has not offered any argument establishing good cause to excuse his petition's procedural defects, nor has he shown actual prejudice. Moreover, Coleman has failed to meet his burden by pleading specific facts demonstrating that a failure to consider his petition would result in a fundamental miscarriage of justice. Therefore, we conclude that the district court did not err in dismissing his second petition.

Having considered Coleman's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Michael A. Cherry, District Judge  
Bunin & Bunin  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>10</sup>See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).