

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTIONE MATEUR JEAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45409

FILED

SEP 23 2005

ORDER OF AFFIRMANCE

JANET E. M. RIGOM
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On May 22, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of forty-three to one hundred and ninety-two months in the Nevada State Prison. No direct appeal was taken.

On June 17, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition, asserting that it was not properly verified pursuant to NRS 34.730. On August 5, 2003, the district court granted the State's motion to dismiss appellant's petition.

On August 28, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On

January 5, 2004, the district court denied appellant's petition. This court affirmed the order of the district court on appeal.¹

On May 11, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On August 23, 2004, the district court denied appellant's petition. This court affirmed the order of the district court on appeal.²

On January 20, 2005, appellant 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 appellant or to conduct an evidentiary hearing. On June 13, 2005, the district court summarily denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his guilty plea was involuntary, his counsel was ineffective, and his rights had been violated during prior post-conviction proceedings. Appellant asserted that his plea had been induced by a false promise and his plea agreement had been breached because he was not transferred to federal custody so that he

¹Jean v. Warden, Docket No. 42973 (Order of Affirmance, August 27, 2004). In our order, we concluded that because appellant's June 17, 2003, habeas corpus petition was not decided on its merits, it was dismissed without prejudice. See Sheriff v. Scalio, 96 Nev. 776, 616 P.2d 402 (1980).

²Jean v. State, Docket No. 43975 (Order of Affirmance, November 17, 2004).

could serve his sentence in the instant case concurrently with his federal sentence.

Appellant filed his petition more than one year after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Moreover, appellant's petition was successive and an abuse of the writ because he had previously filed two post-conviction petitions for writs of habeas corpus, and appellant acknowledged that his petition included new claims for relief as well as identical claims for relief.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ Good cause must be an impediment external to the defense.⁶

In an attempt to excuse his procedural defects, appellant first argued that he had raised the same claims in his June 17, 2003 habeas corpus petition and that he was prevented from filing an appeal by the actions of his counsel.⁷ Appellant failed to demonstrate that this

³See NRS 34.726(1).

⁴See NRS 34.810(2).

⁵See NRS 34.726(1); NRS 34.810(3).

⁶See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁷To the extent that appellant also argued that he had good cause because he had raised his breach claim in his third habeas corpus petition filed on May 11, 2004, we conclude that this argument does not excuse his procedural defects. The May 11, 2004 petition was successive, and this court concluded on appeal that the district court did not err in determining that appellant had failed to demonstrate good cause for filing a successive

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constituted an impediment external to the defense. The record does not support his assertion that he raised the same claims in his June 17, 2003 habeas corpus petition; appellant's June 17, 2003 petition only broadly raised a claim that the plea agreement had been breached, but did not specifically state that the plea agreement had been breached because he was not transferred to federal custody. Moreover, appellant was not represented by counsel in the first petition, was not entitled to the effective assistance of counsel in the post-conviction proceeding, and thus, any alleged actions from counsel could not excuse his procedural defects.⁸ Finally, any appeal from the denial of his petition would not have had a reasonable probability of success because appellant had failed to verify his June 17, 2003 petition. Therefore, we conclude that the district court did not err in rejecting this good cause argument.

Second, appellant argued that he had good cause to excuse his procedural defects because he was not knowledgeable in the science of law and did not understand that he needed to federalize his claims in order for the federal courts to review his claims. Appellant acknowledged that the

... continued

petition. Appellant acknowledged in his petition that he had learned of the facts supporting his breach claim in July 2003. Appellant did not raise the breach claim in his August 2003 petition when the claim was reasonably available to him. See Hathaway v. State, 119 Nev. 248, 253, 71 P.3d 503, 506 (2003).

⁸See Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997); McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996).

main reason he was filing the instant petition was to federalize his claims. Ignorance of the law does not constitute good cause.⁹ Further, the failure to federalize claims in an earlier petition does not provide cause for raising the claims again in an untimely and successive petition.¹⁰ Therefore, we conclude that the district court did not err in rejecting this good cause argument.

Third, appellant claimed that he had good cause to excuse his procedural defects because his trial counsel had failed to release his case file. This court has held that trial counsel's failure to send a petitioner his files did not prevent the petitioner from filing a timely petition.¹¹ Appellant failed to demonstrate that he was prevented from filing a timely petition absent the case file. Therefore, we conclude that the district court did not err in rejecting this good cause argument.

Finally, appellant claimed that he had good cause to excuse his procedural defects because when he filed his first and third petitions he was in a housing unit in the prison that had limited access to the library and inmate law clerks. Appellant failed to demonstrate that his housing and any limitations placed on his access to the library and inmate law clerks prevented him from raising his claims in the first petition

⁹See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

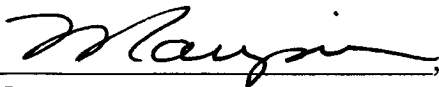
¹⁰See Hathaway, 119 Nev. at 253, 71 P.3d at 506.

¹¹See Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).


considered on the merits. Therefore, we conclude that the district court did not err in rejecting this good cause argument.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.¹² Accordingly, we


ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Jennifer Togliatti, District Judge
Antione Mateur Jean
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹²See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).