

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES LOGAN ELLIS, JR. A/K/A
JAMES LOGAN ELLIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45828

FILED

DEC 23 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

We have reviewed the record on appeal and we conclude that the district court did not err in dismissing appellant's petition for the reasons stated in the attached order. Therefore, briefing and oral argument are not warranted in this case.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.²

Douglas _____, J.
Douglas

Rose _____, J.
Rose

Parraguirre _____, J.
Parraguirre

¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²We have received appellant's proper person document requesting the appointment of counsel, and we deny the relief requested.

cc: Hon. Jerome Polaha, District Judge
James Logan Ellis Jr.
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

CODE 3060

ORIGINAL

FILED

JUL 28 2005

RONALD A. LONGSTIN, JR., CLERK
By *[Signature]*
DEPUTY

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

JAMES L. ELLIS, JR.,

Petitioner,

CASE NO. CR04P1216

vs.

DEPT. NO. 3

THE STATE OF NEVADA,

Respondent.

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

Petitioner was convicted on July 8, 2004. He did not file an appeal. Petitioner had until July 8, 2005 to file his petition for post-conviction relief. NRS 34.726 (1). His petition was filed on July 11, 2005, three days past the deadline.

Petitioner caused to be filed several different documents, which arrived at the court and were file-stamped on June 27, 2005 at 3:56 p.m. One was an Affidavit in Support of Request to Proceed in Forma Pauperis, which was not dated. Another was a Motion for Leave to Proceed in Forma Pauperis, which also was not dated. There was the Financial Certificate, which was attached to the affidavit and it was dated May 24, 2005. There was a Request For Appointment of Counsel, which was not dated and attached to it was an affidavit of indigency, which also was not dated. All

1 of the spaces for the dating of those documents were left vacant. The only document
2 that was dated, was dated by someone from the inmate accounting office.

3 The Court acted on the request to allow Petitioner to proceed *in forma*
4 *pauperis* and filed its order to that effect on June 30, 2005. The affidavit of mailing
5 of that order to Petitioner was also dated June 30th.


6 The Petition was dated however - June 16th, 2005, a date prior to the other
7 documents and the Court's order. Nevertheless, the petition did not get filed in court
8 until July 11, 2005 and therefore it is too late. The "prison mailbox rule" does not
9 apply to post-conviction petitions. *Gonzales v. State*, 118 Nev. 90, 53 P3d 901
10 (2002). Unfortunately, Petitioner waited too long to mail his petition.

11 There was no good cause shown for the delay in filing the petition. See
12 *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994).

13 Paragraph 19 on the form of petition used by the petitioner asks if the petition
14 is being filed more than 1 year after the filing the judgment of conviction and
15 Petitioner wrote 'No.' That would suggest that the petitioner prepared the petition
16 prior to the deadline, but the other documents filed on June 27th indicate that the
17 Petition was mailed after Petitioner received this Court's June 30th Order allowing
18 him to proceed *in forma pauperis*. The Petition was filed too late without any good
19 cause being shown for the delay as required by statute. Hence, the petition must be
20
21 DISMISSED.

22 IT IS SO ORDERED.

23 Dated this 27th day of July, 2005.

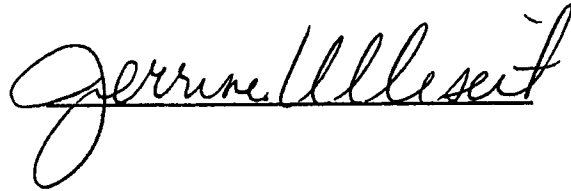
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JEROME M. POLAHA
DISTRICT JUDGE

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 28 day of July 2005, I deposited for mailing a copy of the foregoing to:

**James L. Ellis
Inmate #81983
NNCC
P. O. Box 7000
Carson City, NV 89702**

**Terrance McCarthy, Esq.
Deputy District Attorney
Appellate Division
Via Interoffice Mail**



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