

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARREN MAURICE KING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46200

FILED

MAR 02 2006

ORDER OF AFFIRMANCE

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

This is a proper person 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.

On January 7, 1999, the district court convicted appellant, pursuant to a jury verdict, of two counts of trafficking in a controlled substance, three counts of attempted murder with the use of a deadly weapon, and one count of discharge of a firearm into an unoccupied structure. The district court sentenced appellant to serve a term of 13 to 60 months in the Nevada State Prison, to run concurrent with three concurrent terms of 43 to 192 months, followed by a consecutive term of 10 to 25 years. This court affirmed appellant's conviction on direct appeal.¹ The remittitur issued on June 27, 2000.

¹King v. State, 116 Nev. 349, 998 P.2d 1172 (2000).

On July 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 November 16, 2005, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than five years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.³ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁴

In an attempt to demonstrate good cause, appellant claimed that he had hired an attorney to file a petition for him, had assumed the attorney had filed the petition, and did not find out that the attorney did not file a petition until January 4, 2004.⁵ Appellant also claimed that when he found out that his post-conviction counsel had not filed a petition, he attempted to retrieve his files from the attorney, but was unable to do

²See NRS 34.726(1).

³See id.

⁴See NRS 34.800(2).

⁵Appellant did not include any claims for relief in his petition for writ of habeas corpus other than a good cause argument.

so. Consequently, appellant then had to construct a petition with only the assistance of an inmate law clerk. Appellant claimed that his petition was further delayed because the prison was on lockdown due to riots in July of 2004, and that he was not able to use the prison library during this time.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate adequate cause to excuse his delay and failed to overcome the presumption of prejudice to the State. There is no right to effective assistance of post-conviction counsel, and therefore, a claim of ineffective assistance of counsel is not good cause.⁶ Even assuming that the actions of counsel could excuse part of the delay, appellant failed to demonstrate good cause for the entire length of the delay. By appellant's own admission, he received court minutes on December 8, 2003, in which appellant discovered that there had been no extension or post-conviction petition for a writ of habeas corpus filed on his behalf.⁷ This was

⁶See McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996); see also Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997).

⁷The district court found that appellant knew, or should have known, that his post-conviction counsel had not filed a petition on his behalf on April 7, 2002, when appellant wrote counsel a letter stating that he had filed a complaint with the California State Bar. It appeared from that letter, however, that although appellant was aware of the time limitations that apply to the filing of post-conviction petitions for writs of habeas corpus in Nevada, he may not have been aware that counsel had not filed a petition on his behalf. Rather, appellant's letter complained of counsel's failure to communicate with appellant.

approximately a year and seven months prior to the date that appellant filed his proper person petition. Appellant's nineteen-month delay in filing his petition after learning that his post-conviction counsel had failed to file a petition was unreasonable.⁸ Further, appellant did not specify how long the prison was on lockdown or how the lockdown prevented him from filing a petition within a reasonable amount of time after learning that his counsel did not file a post-conviction petition on his behalf.⁹ Finally, appellant's lack of legal training is not good cause.¹⁰ Therefore, the district court did not err in determining that appellant's post-conviction petition for a writ of habeas corpus was procedurally barred.

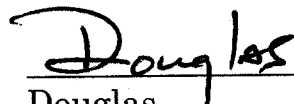
⁸See Hathaway v. State, 119 Nev. 248, 254, 71 P.3d 503, 507-08 (2003) (stating that a petitioner's reliance upon his counsel to file a direct appeal is sufficient cause to excuse a procedural default if the petitioner demonstrates he reasonably believed that his counsel was filing a direct appeal and petitioner filed for post-conviction relief within a reasonable time after he should have known that his counsel was not pursuing his direct appeal) (quoting Loveland v. Hatcher, 231 F.3d 640, 644 (9th Cir. 2000)).


⁹See Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994) ("To establish good cause to excuse a procedural default, a defendant must demonstrate that some impediment external to the defense prevented him from complying with the procedural rule that has been violated.")

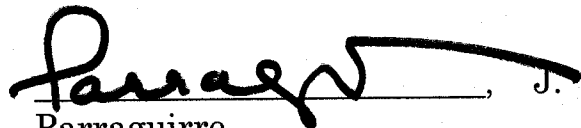
¹⁰See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that organic brain damage and lack of legal assistance are not sufficient good cause) abrogated on other grounds by State v. Haberstroh, 119 Nev. 173, 69 P.3d 676 (2003).

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.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹²


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹²The record before us indicates that attorney Dan Taylor, California State Bar No. 91924, accepted payment of \$5,000 from appellant to file a post-conviction petition for a writ of habeas corpus in the Nevada district court, even though attorney Taylor is not licensed to practice law in the State of Nevada. Additionally, it appears that attorney Taylor did not file the requested petition, and his actions may have contributed to appellant's inability to timely pursue post-conviction relief in this state. We consider attorney Taylor's conduct in this matter sufficiently suspect as to warrant referral to the State Bars of Nevada and California for such disciplinary investigations or proceedings as are deemed warranted. Accordingly, we direct the clerk of this court to provide a copy of this order to the State Bar of Nevada and the State Bar of California. The clerk of this court shall specifically direct the attention of those authorities to this footnote.

cc: Hon. Nancy M. Saitta, District Judge
Darren Maurice King
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Dan Taylor
Clark County Clerk
State Bar of California
Bar Counsel, State Bar of Nevada