

IN THE SUPREME COURT OF THE STATE OF NEVADA

RALPH SCHNEIDER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46813

FILED

JUL 10 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 denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On January 28, 1997, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon, one count of false imprisonment, one count of battery with a deadly weapon, and one count of battery causing substantial bodily harm. The district court sentenced appellant to serve terms totaling 108 to 407 months in the Nevada State Prison. This court dismissed appellant's direct appeal.¹ The remittitur issued on June 25, 1997.

On November 23, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant requested the appointment of counsel. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent

¹Schneider v. State, Docket No. 30037 (Order Dismissing Appeal, June 6, 1997).

appellant or to conduct an evidentiary hearing. On February 7, 2006, the district court denied appellant's petition. This appeal followed.²

Appellant filed his petition approximately eight and one-half years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴

In an attempt to demonstrate cause for the delay, appellant argued that his use of psychotropic medications from June 6, 1997 through May 6, 2003, prevented him from having the mental capacity to understand or function properly. Appellant further claimed that his appellate counsel was ineffective for failing to inform him about post-conviction remedies.

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 good cause to excuse his delay. Appellant failed to demonstrate that an impediment external to the defense prevented him from filing a timely petition.⁵ Appellant's claim of ineffective assistance of

²We conclude that the district court did not abuse its discretion in denying appellant's request for the appointment of counsel. See NRS 34.750.

³See NRS 34.726(1).

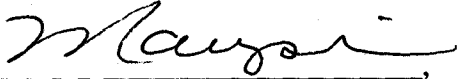
⁴See id.

⁵See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that organic brain damage is not good cause).

appellate counsel is not good cause.⁶ Therefore, we affirm the order of the district court.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Steven R. Kosach, District Judge
Ralph Schneider
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁶See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003) (recognizing that in order to demonstrate good cause a claim of ineffective assistance of counsel must not itself be procedurally defaulted).

⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).