

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47058

FILED

SEP 08 2006

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

ORDER OF AFFIRMANCE

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

On September 7, 2004, the district court convicted appellant, pursuant to a guilty plea, of battery with intent to commit a crime (sexual assault). The district court sentenced appellant to serve a term of 36 to 156 months in the Nevada State Prison. No direct appeal was taken.

On January 25, 2006, 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 May 4, 2006, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately one year and four months after entry of the judgment of conviction. Thus, appellant's

petition was untimely filed.¹ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.²

In an attempt to excuse his procedural defects, appellant argued that his delay should be excused because he requested that trial counsel file a direct appeal, and counsel failed to do so; and trial counsel failed to provide him with his files in a timely fashion despite his requesting a copy of his files following sentencing.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. An appeal deprivation claim is generally not good cause if that claim was reasonably available to the petitioner within the one-year statutory period for filing a post-conviction habeas petition.³ Appellant did not specify when he realized that counsel had failed to file a direct appeal, and thus, failed to demonstrate that he filed this petition in a reasonable time following that discovery.⁴ 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.⁵ Appellant failed to demonstrate that he was prevented

¹See NRS 34.726(1).

²See id.

³See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

⁴Hathaway, at 251, 71 P.3d at 505.

⁵See Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

from filing a timely petition absent the case file.⁶ Thus, the district court did not err in finding that appellant did not demonstrate good cause.

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.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Honorable Jackie Glass, District Judge
Donald Brown
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁶See Hathaway, 119 Nev. 248, 71 P.3d 503.

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