

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT YOUNG,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47334

**FILED**

AUG 25 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 appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On February 6, 1998, the district court convicted appellant, pursuant to a guilty plea, of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of forty to one hundred twenty months in the Nevada State Prison. Appellant did not file a direct appeal.

On September 7, 2005, appellant filed a motion to correct an illegal sentence in the district court. The district court denied the motion on October 4, 2005. Appellant did not file an appeal from the denial of the motion.

On March 3, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing appellant failed to demonstrate good cause to excuse the delay in filing the petition. Moreover, the State specifically pleaded laches. 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 1, 2006, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than eight years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.<sup>1</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>2</sup> Good cause must be an impediment external to the defense.<sup>3</sup> Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.<sup>4</sup>

In an attempt to excuse his procedural defects, appellant argued that the petition was timely filed because it was filed within one year of the order denying his motion to correct an illegal sentence. Appellant further claimed that he was unable to file a timely appeal from the motion to correct an illegal sentence because he did not have adequate time to consult with other inmates about his appeal rights. In the petition, appellant challenged the district court's denial of his motion to correct an illegal sentence.

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 for his procedural defects. Appellant failed to demonstrate that an impediment external to the defense prevented him

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<sup>1</sup>See NRS 34.726(1).

<sup>2</sup>See *id.*

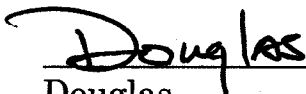
<sup>3</sup>See *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994).


<sup>4</sup>See NRS 34.800(2).


from filing a timely petition. The failure to timely appeal from the denial of a motion to correct an illegal sentence is not an impediment external to the defense and does not constitute good cause for challenging the denial of the motion in a subsequent post-conviction petition for a writ of habeas corpus. Further, appellant failed to overcome the presumption of prejudice to the State. Accordingly, we conclude the district court did not err in denying appellant's petition as procedurally barred.

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.<sup>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Joseph T. Bonaventure, District Judge  
Robert Young  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).