

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEY LEE MARKHAM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47555

FILED

JAN 05 2007

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; Stewart L. Bell, Judge.

On October 28, 2004, the district court convicted appellant, pursuant to a guilty plea, of sexual assault of a minor under sixteen years of age and attempted lewdness with a minor under the age of fourteen. The district court sentenced appellant to serve two consecutive terms of five to twenty years in the Nevada State Prison. Appellant did not file a direct appeal.

On April 24, 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 June 22, 2006, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately eighteen months after entry of the judgment of conviction. Thus, appellant's petition was

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

Appellant did not allege good cause on the face of the petition. The State's response to appellant's petition and the district court order refer to an affidavit containing two good cause claims: (1) that appellant contended that his counsel did not inform him that he could file an appeal; and (2) that appellant mailed his petition and case file to a friend who was unable to file the petition in a timely manner.

The record on appeal does not contain an affidavit, and thus it appears that appellant did not file his affidavit in the district court. Therefore, this court declines to consider appellant's good cause claims. Even assuming that the affidavit was presented in the district court for filing and mistakenly not filed, no good cause was demonstrated. Trial counsel's failure to inform appellant about the right to appeal is not good cause in the instant case.³ Furthermore, appellant's friend's failure to timely submit documents for filing is not an impediment external to the defense.⁴ Therefore, we conclude that the district court did not err in denying appellant's petition as procedurally barred.

¹See NRS 34.726(1).

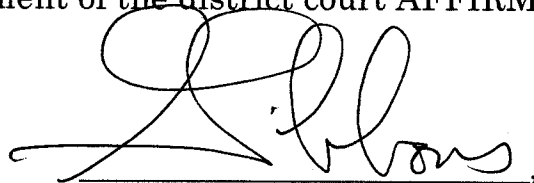
²Id.

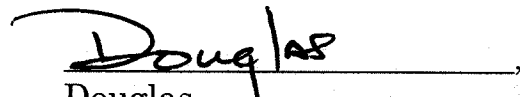
³Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

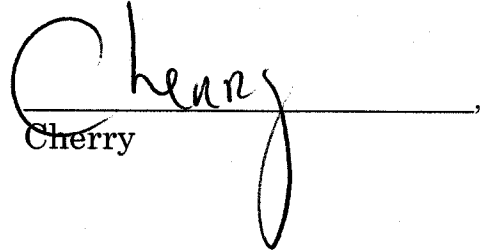
⁴See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); see also Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Stewart L. Bell, District Judge
Joey Lee Markham
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.