

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN ESBER MANZUR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47615

FILED

MAR 09 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. ...*  
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; Douglas W. Herndon, Judge.

On April 6, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of first degree kidnapping, one count of battery with the use of a deadly weapon with substantial bodily harm, one count of battery causing substantial bodily harm, one count of assault with a deadly weapon, one count of discharging a firearm at or into a structure, two counts of coercion and two counts of child abuse and neglect. The district court sentenced appellant to serve a term of 60 to 180 months in the Nevada State Prison for the kidnapping count; a consecutive term of 26 to 120 months for the battery with a deadly weapon causing substantial bodily harm count; a concurrent term of 12 to 36 months for the battery causing substantial bodily harm count; a concurrent term of 12 to 48 months for the assault with a deadly weapon count; a concurrent term of 12 to 36 months for the discharging a firearm at or into a structure count; two concurrent terms of 12 to 36 months for

the coercion counts; and two consecutive terms 12 to 48 months for the child abuse and neglect counts. Appellant did not file a direct appeal.

On December 9, 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 the district court declined to appoint counsel to represent appellant. Following an evidentiary hearing, the district court dismissed appellant's petition on July 25, 2006. This appeal followed.

Appellant filed his petition approximately twenty months after the judgment of conviction was entered. 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>

Appellant contended that he should be excused from the procedural defects because his counsel failed to file a direct appeal after appellant asked him to file an appeal. Appellant claimed that he believed that his attorney filed a direct appeal, and when he discovered that his attorney did not file a direct appeal (1) his use of psychotropic medications prevented him from having the mental capacity to understand or function properly to file a timely petition, and (2) the prison was on lockdown following a race riot and he did not have access to the prison library.

Based on our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to establish that an impediment external to the defense prevented him from

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

<sup>2</sup>See id.

raising his claims earlier.<sup>3</sup> An appeal deprivation claim does not constitute good cause to excuse an untimely petition absent limited circumstances.<sup>4</sup> In order to demonstrate good cause, a petitioner must demonstrate that

(1) he actually believed his counsel was pursuing his direct appeal, (2) his belief was objectively reasonable, and (3) he filed his state post-conviction relief petition within a reasonable time after he should have known that his counsel was not pursuing his direct appeal.<sup>5</sup>

Trial counsel testified at the evidentiary hearing that appellant did not ask him to file a direct appeal. Even had appellant asked counsel to file a direct appeal, appellant waited eight months to file his petition following the date that he claims to have discovered that counsel had not filed an appeal. Appellant failed to demonstrate that he was medicated, or that the medication prevented him from filing a timely petition,<sup>6</sup> especially given appellant's testimony during the evidentiary hearing that he stopped receiving the medication approximately nine months prior to filing his petition. Appellant failed to demonstrate the length of lockdown status or that he was not provided with adequate

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<sup>3</sup>See Hathaway v. State, 119 Nev. 248, 254, 71 P.3d 503, 507-08 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>4</sup>See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

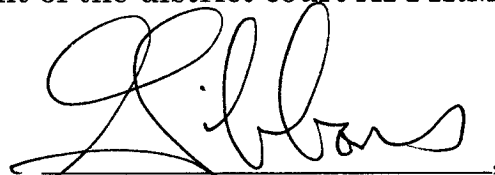
<sup>5</sup>Hathaway, 119 Nev. at 254, 71 P.3d at 507-08 (quoting Loveland v. Hatcher, 231 F.3d 640, 644 (9<sup>th</sup> Cir. 2000)).

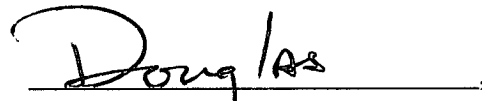
<sup>6</sup>Cf. Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that organic brain damage and reliance on inmate law clerk for assistance is not good cause to excuse procedural default).

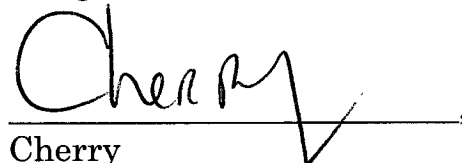
access to legal materials which prevented him from filing a timely petition. Thus, we conclude that the district court did not abuse its discretion in determining that appellant failed to demonstrate good cause to excuse his procedural defaults.<sup>7</sup> Accordingly, we affirm the order of the district court dismissing 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>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>9</sup>

  
\_\_\_\_\_, J.  
Gibbons

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

  
\_\_\_\_\_, J.  
Cherry

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<sup>7</sup>See Lozada, 110 Nev. 349, 871 P.2d 944; see also Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989).

<sup>8</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>9</sup>We 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.

cc: Hon. Douglas W. Herndon, District Judge  
Juan Esber Manzur  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk