

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO FERNANDO MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47863

FILED

DEC 15 2006

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On December 10, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of lewdness with a child under the age of fourteen and one count of attempted sexual assault of a child under the age of fourteen. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years and a consecutive term of two to twenty years. The district court further imposed the special sentence of lifetime supervision. No direct appeal was taken.

On April 19, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition, and appellant filed a response. 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 July 14, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition approximately sixteen 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 cause for the delay and prejudice.²

In an attempt to demonstrate cause for the delay, appellant argued he had good cause because he was in lockdown status for five months after being transferred to the Nevada Department of Corrections, his case files were not transferred by his trial counsel until after December 2005, and he was denied meaningful access to the law library because of his lockdown status and language barrier. Appellant further claimed that he believed his counsel had filed an appeal on his behalf because he assumed it was standard practice when a life sentence was imposed.

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. Appellant failed to demonstrate that an impediment external to the defense prevented him from filing a timely petition.³ Lockdown status is not a sufficient allegation of good cause without some demonstration of official interference. Trial counsel's failure to send appellant his case files is not good cause.⁴ Appellant failed to demonstrate that he was deprived of meaningful access to the law library.⁵ The record indicates that appellant had some understanding of the

¹See NRS 34.726(1).

²See *id.*

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

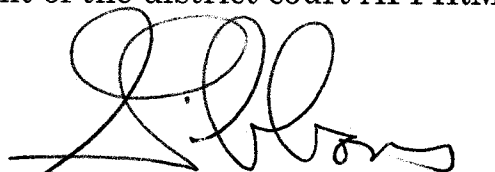
⁴See *Hood v. State*, 111 Nev. 335, 890 P.2d 797 (1995). We note that it does not appear that appellant even requested his case files until November 28, 2005.


⁵See *Lewis v. Casey*, 518 U.S. 343, 350-60 (1996).

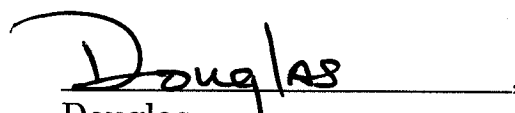
English language as the district court twice noted during the plea canvass that appellant was answering questions before the interpreter finished interpreting the questions. Finally, appellant failed to demonstrate that he had a reasonable, but mistaken belief that his counsel had filed a direct appeal on his behalf, and thus, trial counsel's failure to file a direct appeal in this case is not good cause.⁶

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.


Gibbons, J.


Maupin, J.


Douglas, J.

⁶See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003). We note that appellant stipulated to receiving a life sentence, and thus, appellant's contention that his trial counsel should have known to file a direct appeal on his behalf is without merit.

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

cc: Hon. Jennifer Togliatti, District Judge
Antonio Fernando Martinez
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk