

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER R. HUBBLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48048

FILED

FEB 08 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 dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On April 29, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of second degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. No direct appeal was taken.

On December 12, 2005, appellant filed a proper person motion to withdraw the guilty plea in the district court. The State opposed the motion. On January 24, 2006, the district court denied the motion. This court affirmed the order of the district court on appeal.¹

¹Hubble v. State, Docket No. 46779 (Order of Affirmance, July 10, 2006).

On May 8, 2006, appellant filed a motion to correct an illegal sentence in the district court. The State opposed the motion. On May 30, 2006, the district court denied the motion. No appeal was taken.

On June 8, 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. 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 August 2, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than two years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³ A petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice.⁴

In an attempt to demonstrate cause for the delay, appellant argued that he had believed his counsel had filed a direct appeal on his behalf and that he only learned September 9, 2005, that counsel had not

²See NRS 34.726(1).

³See id.

⁴Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

filed a direct appeal. Appellant further claimed that he was actually innocent of the crime.

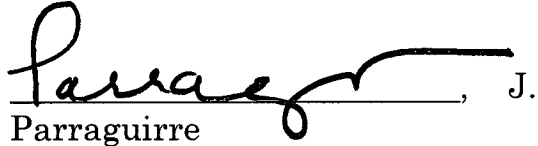
Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing his petition as procedurally time barred. Appellant failed to demonstrate that an impediment external to the defense prevented him from filing a timely petition.⁵ Although a reasonable belief that trial counsel had filed a direct appeal, when in fact trial counsel had not, may in certain circumstances establish good cause to excuse an untimely petition, appellant did not demonstrate good cause in the instant case because his nine month delay in filing his petition was not reasonable.⁶ Finally, appellant offered no facts or argument in support of his claim of actual innocence, and thus, appellant failed to demonstrate that failure to consider his petition on the merits would result in a fundamental miscarriage of justice.⁷

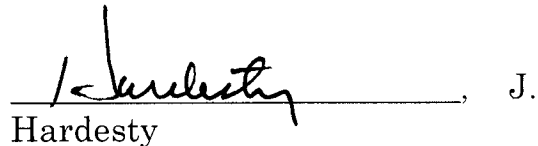
⁵See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

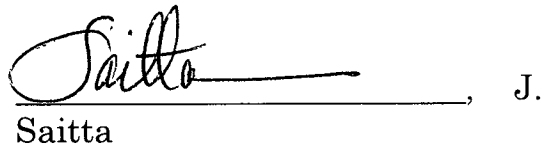
⁶See Hathaway v. State, 119 Nev. 248, 254, 71 P.3d 503, 507-08 (2003) (setting forth that a petitioner must file a post-conviction petition within a reasonable time after he should have known that his counsel was not pursuing his direct appeal). We note that during the nine-month period from the time he learned a direct appeal had not been filed to the filing of his petition, appellant filed a motion to withdraw the guilty plea and a motion to correct an illegal sentence.

⁷See Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan, 112 Nev. at 842, 921 P.2d at 922; see also Bousley v. United States, 523 U.S. 614 (1998); Murray v. Carrier, 477 U.S. 478, 496 (1986).

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.⁸ Accordingly, we ORDER the judgment of the district court AFFIRMED.


Parraguirre, J.


Hardesty, J.


Saitta, J.

cc: Hon. Donald M. Mosley, District Judge
Christopher R. Hubble
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).