

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN WESLEY KAPALA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48231

FILED

APR 26 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 appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On December 8, 2003, the district court convicted appellant, pursuant to a guilty plea, of possession of a controlled substance. The district court sentenced appellant to serve a term of twelve to thirty-four months in the Nevada State Prison, suspended his sentence, and placed him on probation for a period not to exceed three years. Appellant did not file a direct appeal. On May 13, 2005, the district court entered an order formally revoking appellant's probation and executing the original prison sentence.

On June 30, 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 September 28, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition approximately two and one-half years after entry of the judgment of conviction.¹ Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.³ Good cause must be an impediment external to the defense.⁴

In an attempt to excuse his procedural defect, appellant argued that he lacked the legal knowledge to appeal his conviction in a timely manner. Appellant further argued that he was not aware until recently that he had received ineffective assistance of his trial counsel.

Based upon the record on appeal, we conclude that the district court did not err in dismissing appellant's petition as procedurally barred. Appellant failed to demonstrate that information regarding the filing of an appeal and his counsel's alleged ineffective assistance was not available to him at an earlier time and that an impediment external to the defense prevented him from filing in a timely manner. Appellant's lack of legal training is not good cause.⁵ Therefore, we conclude that the district court did not err in dismissing appellant's petition as procedurally barred.

¹Appellant's petition is likewise untimely from the order revoking probation, and thus, the order revoking probation is not good cause to overcome the procedural bars. See Sullivan v. State, 120 Nev. 537, 96 P.3d 761 (2004).

²See NRS 34.726(1).

³See id.

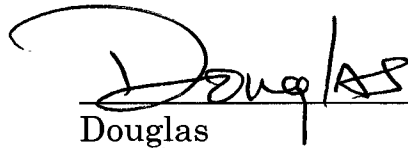
⁴See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

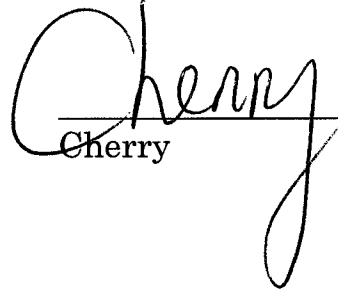
⁵See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that organic brain damage and lack of legal assistance are not sufficient good cause).

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Donald M. Mosley, District Judge
Shawn Wesley Kapala
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁶See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁷The Clark County Public Defender's Office filed a motion to withdraw on November 2, 2006. Pursuant to the order dated October 31, 2006, this motion is hereby moot.