

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY JOE ORMOND A/K/A TERRY
JOE ORMAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48235

FILED

FEB 07 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 February 11, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of four to ten years in the Nevada State Prison. No direct appeal was taken.

On November 22, 2005, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On December 15, 2005, the district court denied the motion. This court affirmed the decision of the district court on appeal.¹

¹Ormond v. State, Docket No. 46548 (Order of Affirmance, May 25, 2006).

On July 11, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant also filed a motion for the appointment of counsel. The State filed a motion to dismiss the petition as the petition was untimely filed. Appellant filed a reply. 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 October 5, 2006, the district court dismissed appellant's petition. This appeal followed.²

Appellant filed his petition more than three years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴

In an attempt to demonstrate cause for the delay, appellant argued that he had good cause because his trial counsel failed to advise him of the right to appeal and because appellant only recently learned that the district court failed to determine that a box cutter was an "inherently dangerous weapon" for purposes of NRS 193.165 and that his trial counsel was ineffective in this regard.

²To the extent that appellant appealed the decision of the district court to deny his motion for the appointment of counsel, we conclude that the district court did not abuse its discretion in denying appellant's motion. See NRS 34.750.

³See NRS 34.726(1).

⁴See id.

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 cause to excuse his delay. Appellant failed to demonstrate that his claims were not reasonably available within the one-year period for filing a timely habeas corpus petition.⁵ Trial counsel's failure to inform appellant of the right to appeal in the instant case is not good cause to excuse this petition.⁶ Moreover, as a separate and independent ground to deny relief, appellant claims were without merit. Appellant was informed in the written guilty plea agreement of his limited right to appeal, and thus, he failed to demonstrate that his counsel was ineffective in this regard.⁷ Further, in entering his guilty plea, appellant admitted to the facts supporting the deadly weapon enhancement. More importantly, a box cutter may qualify as a deadly weapon under the functional test set forth in NRS 193.165.⁸ Thus, he failed to demonstrate that his trial counsel was ineffective in this regard.⁹ Therefore, we conclude that the district court did not err in dismissing the petition as procedurally time barred.

⁵See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

⁶See id.; Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

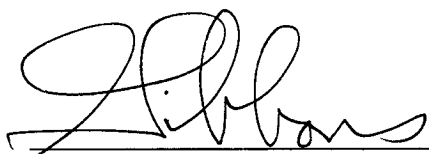
⁷See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

⁸See NRS 193.165(5)(b).

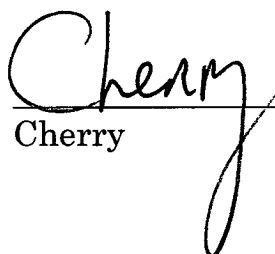
⁹See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

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

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).