

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD HOUSTON JEFFRIES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48299

FILED

MAY 16 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 denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On April 6, 2004, the district court convicted appellant, pursuant to a guilty plea, of lewdness with a minor under the age of 14 (Count 1), sexual assault of a minor under the age of 16 (Count 2), and attempted sexual assault of a minor under the age of 14 (Count 3). The district court sentenced appellant to serve consecutive terms of life with the possibility of parole after 10 years for Count 1, 5 to 20 years for Count 2, and 16 to 24 months for Count 3 in the Nevada State Prison. On August 10, 2004, the district court amended the judgment and increased the sentence for Count 3 to 24 to 60 months in the Nevada State Prison. Appellant did not file a direct appeal.

On September 13, 2005, appellant filed a "Motion to Vacate, Set Aside or Correct Sentences and Pro Se Motion for Clarification of

Sentences." The district court denied appellant's motion. Appellant appealed, and this court affirmed the district court's order.¹

On July 10, 2006, appellant filed a proper person "Motion to Vacate Illegal Sentence" pursuant to NRS 176.555. The State opposed the motion. The district court denied the motion on August 21, 2006. Appellant did not appeal the denial of this motion.

On July 10, 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 October 24, 2006, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition over two years after entry of the judgment of conviction. Thus, appellant's petition was untimely.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice.³ Claims that were reasonably

¹Jeffries v. State, Docket No. 46166 (Order of Affirmance, February 17, 2006).

²See NRS 34.726(1); see also Sullivan v. State, 120 Nev. 537, 96 P.3d 761 (2004) (holding that the issuance of an amended judgment does not affect the statutory time period, but may be good cause for an untimely petition in certain circumstances).

³See NRS 34.726(1).

available during the statutory period must be filed within the statutory period.⁴

Appellant asserted that his petition was timely because he filed his petition within one year of the issuance of remittitur on his direct appeal. However, appellant did not appeal his judgment of conviction. Rather, the petition referenced the issuance of remittitur from this court's affirmance of the district court's denial of his prior motion to correct an illegal sentence. The remittitur from this court's order affirming the district court's denial of his motion does not trigger or alter the time for filing a timely petition.⁵ Although appellant asserted that his counsel did not file a requested direct appeal, he did not assert that his counsel's failure to file was unknown to him within the statutory period.⁶ Moreover, appellant failed to allege specific facts concerning the failure to file an

⁴Hathaway v. State, 119 Nev. 248, 253, 71 P.3d 503, 506 (2003).


⁵See NRS 34.726(1); Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998).

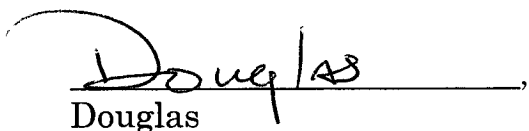
⁶See Hathaway, 119 Nev. at 254, 71 P.3d at 507 (holding that good cause was shown where petitioner "requested that his attorney file an appeal, his attorney had affirmatively indicated that he would file an appeal, he believed that his attorney had filed an appeal on his behalf, and he filed his habeas corpus petition within a reasonable time after learning that his attorney had not filed an appeal.").

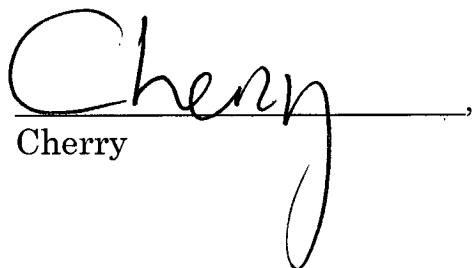
appeal.⁷ Accordingly, we concluded that the district court did not err in finding that appellant's claims were procedurally barred.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Stewart L. Bell, District Judge
Edward Houston Jeffries
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁷See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that bare, or naked, allegations unsupported by specific facts are insufficient to grant habeas corpus relief).

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