IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ALLEN CAPRI, Appellant, vs. THE STATE OF NEVADA, Respondent. No. 48303

FILED

MAY 22 2007

JANETTE M. BLOOK

ORDER OF AFFIRMANCE

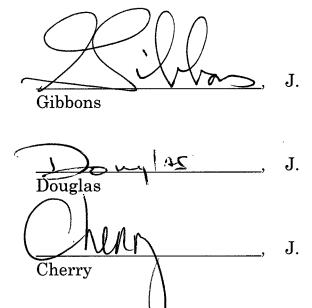
This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

We have reviewed the record on appeal and we conclude that the district court did not err in dismissing appellant's petition for the reasons stated in the attached order. Therefore, briefing and oral

¹Appellant insisted that he filed his document pursuant to U.S. Const. art. 1, § 9. We conclude that the district court did not err in construing this to be a post-conviction petition for habeas corpus relief. See NRS 34.724(2)(b).

SUPREME COURT OF NEVADA argument are not warranted in this case.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.³



 cc: Hon. Sally L. Loehrer, District Judge Richard Allen Capri Attorney General Catherine Cortez Masto/Carson City Clark County District Attorney David J. Roger Eighth District Court Clerk

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

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

SUPREME COURT OF NEVADA

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1	ORDR JULIZIAN FILES	
2	DAVID ROGER Clark County District Attorney Nevada Bar #002781 SEP 20 2 05 PH '06	
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4	Chief Deputy District Attorney Nevada Bar #004232 200 Lewis Avenue	
5	Las Vegas, Nevada 89155-2212	
6	(702) 671-2500 Attorney for Plaintiff	
7	DISTRICT COURT CLARK COUNTY, NEVADA	
8	THE STATE OF NEVADA,	
9	Plaintiff, CASE NO: C152948	
10	-vs- DEPT NO: XV	
11	RICHARD CAPRI, #00161704	
12	Defendant.	
13		
14	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	
15	DATE OF HEARING: 9/13/06 TIME OF HEARING: 8:30 A.M.	
10		
18	THIS CAUSE having come on for hearing before the Honorable Sally Loehrer,	
19	District Judge, on the 13th day of September, 2006, the Petitioner being present, Proceeding	
20	In Forma Pauperis, the Respondent being represented by DAVID ROGER, District Attorney,	
21	by and through THOMAS M. CARROLL, Chief Deputy District Attorney, and the Court	
22	having considered the matter, including briefs, transcripts, arguments of counsel, and	
23	documents on file herein, now therefore, the Court makes the following findings of fact and	
24	conclusions of law:	
<b>o</b> 25	FINDINGS OF FACT	
	1. On June 4, 1999, Richard Capri, hereinafter "Defendant", pled guilty to Count I -	
SEP 2 0 2006	Sexual Assault with a Minor Under Fourteen Years of Age, and Count II - Sexual Assault.	
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1	2.	On February 29, 2000, Defendant was adjudged guilty and sentenced as follows:
2	l	LIFE in prison with the possibility of parole after a minimum of ten (10) years for
3		each count. Count II was ordered to run consecutive with Count I.
4	3.	The Judgment of Conviction (Plea of Guilty) was entered on March 7, 2000.
5	4.	Defendant filed a Notice of Appeal to the Nevada Supreme Court on January 30,
6		2003. The Appeal was dismissed and Remittitur issued on March 28, 2003.
7	5.	On July 29, 2003, Defendant filed his first Petition for Writ of Habeas Corpus (Post-
8		Conviction). The District Court denied Defendant's Petition on December 15, 2003,
9		on the grounds that it was untimely filed and that Defendant made no showing of
10		good cause for the delay, per NRS 34.726.
11	6.	Defendant Appealed his denial to the Nevada Supreme Court on January 23, 2004.
12		The Court affirmed the District Court's denial on August 16, 2004. Remittitur issued
13	l.	on September 7, 2004.
14	7.	Defendant Appealed to the Nevada Supreme Court for the second time on November
15		23, 2004. The Appeal was dismissed on January 13, 2005. Remittitur issued on
16		February 8, 2005.
17	8.	On June 21, 2005, Defendant filed a Motion to Withdraw his Guilty Plea. The Court
18		denied this motion on August 11, 2005.
19	9.	On December 21, 2005, Defendant Appealed to the Nevada Supreme Court for the
20		third time. The Court affirmed the District Court's denial and Remittitur issued on
21		January 17, 2006.
22	10.	Defendant filed another Petition for Writ of Habeas Corpus on June 15, 2006.
23	<b>n</b> .	Defendant's petition was not filed within one-year of his judgment of conviction.
24	12.	Defendant has not shown good cause for the untimely filing of his petition.
25	13.	Dismissal of the instant petition will not prejudice the Defendant.
26	14.	Defendant does not qualify for bail pending the decision on his post-conviction relief
27		because Defendant's petition is time barred and he has not provided any evidence of
28		extraordinary circumstances such that bail should be granted.
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1	CONCLUSIONS OF LAW
2	1. The mandatory provisions of NRS 34.726 state:
3 4 5 6 7	<ol> <li>Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:         <ul> <li>(a) That the delay is not the fault of the petitioner; and</li> <li>(b) That dismissal of the petition as untimely will unduly prejudice the petitioner.</li> </ul> </li> </ol>
8 -	2. In <u>Gonzales v. State</u> , 118 Nev. 61, 590 P.3d 901 (2002), the Nevada Supreme Court
9	rejected a habeas petition that was filed two days late, pursuant to the "clear and
10	unambiguous" mandatory provisions of NRS 34.726(1). Gonzales reiterated the
- 11	importance of filing the petition with the district court within the one year mandate,
12	absent a showing of "good cause" for the delay in filing. Gonzales, 53 P.3d at 902.
13	3. "In order to demonstrate good cause, a petitioner must show that an impediment
14	external to the defense prevented him or her from complying with the state procedural
15	default rules." <u>Hathaway v. State</u> , 119 Nev. 30, 71 P.3d 503, 506 (2003); citing
16	Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State,
17	110 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 769
18	P.2d 72 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252
19	(1997); <u>Phelps v. Director</u> , 104 Nev. 656, 764 P.2d 1303 (1988).
20	4. Such an external impediment could be "that the factual or legal basis for a claim was
21	not reasonably available to counsel, or that 'some interference by officials' made
22	compliance impracticable". <u>Hathaway</u> , 71 P.3d at 506; quoting <u>Murray v. Carrier</u> , 477
23	U.S. 478, 488, 106 S.Ct. 2639, 2645 (1986); see also Gonzalez, 53 P.3d at 904; citing
24	Harris v. Warden, 114 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4 (1998). Clearly, any
25	delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a)
26	5. To find good cause there must be a "substantial reason; one that affords a legal
27	excuse". <u>Hathaway</u> , 71 P.3d at 506; quoting <u>Colley v. State</u> , 105 Nev. 235, 236, 773
28	p.2d 1229, 1230 (1989), quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw.
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1	1981).	
2	6. The lack of the assistance of counsel when preparing a petition and even the failure of	
3	trial counsel to forward a copy of the file to a petitioner has been found to not	
4	constitute good cause. See Phelps v. Director Nevada Department of Prisons, 104	
5	Nev. 656, 660, 764 P.2d 1303 (1988); Hood v. State, 111 Nev. 335, 890 P.2d 797	
6	(1995).	
7	7. NRS 178.4871 states in pertinent part:	
8	A person who has filed a post-conviction petition for habeas corpus:	• .
9	2. Must not be admitted to bail pending a review of his petition unless:	
10	(b) The petition presents substantial questions of law or fact and does	
11	not appear to be barred procedurally; (c) The petitioner has made out a clear case on the merits; and	
12	(d) There are exceptional circumstances deserving of special treatment	
13	in the interest of justice.	
14	NRS 178.4871 (2) (b)(c) and (d).	
15	ORDER	
16	THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction	
17	Relief shall be, and it is, hereby DISMISSED.	
18	DATED this <u>19</u> day of September, 2006.	
19	Aday carlo B	
20	DISTRICT JUDGE	
21		
22	DAVID ROGER	
23	DISTRICT ATTORNEY Nevada Bar #002781	
24	T MA A	
25	BY Thomas M. Causef	
26	THOMAS M. CARROLL Chief Deputy District Attorney Nevada Bar #004232	
27 28	Nevada Bar #004232 TMC/mf/ct/SVU	
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