

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

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 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

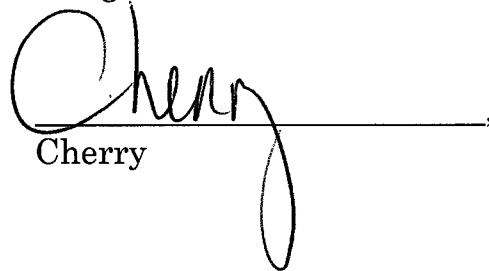
¹Appellant insisted that he filed his document pursuant to U.S. Const. art. 1, § 9. We conclude that the district court did not err in construing this to be a post-conviction petition for habeas corpus relief. See NRS 34.724(2)(b).

argument are not warranted in this case.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


Gibbons J.


Douglas J.


Cherry J.

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 Lockett 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.

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ORDR
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
THOMAS M. CARROLL
Chief Deputy District Attorney
Nevada Bar #004232
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

SEP 20 2 06 PM '06

Sally L. Loehrer
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

RICHARD CAPRI, #00161704
Defendant.

CASE NO: C152948
DEPT NO: XV

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

DATE OF HEARING: 9/13/06
TIME OF HEARING: 8:30 A.M.

THIS CAUSE having come on for hearing before the Honorable Sally Loehrer, District Judge, on the 13th day of September, 2006, the Petitioner being present, Proceeding In Forma Pauperis, the Respondent being represented by DAVID ROGER, District Attorney, by and through THOMAS M. CARROLL, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On June 4, 1999, Richard Capri, hereinafter "Defendant", pled guilty to Count I - Sexual Assault with a Minor Under Fourteen Years of Age, and Count II - Sexual Assault.

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COUNTY CLERK

- 1 2. On February 29, 2000, Defendant was adjudged guilty and sentenced as follows:
2 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 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 11. 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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1981).

6. The lack of the assistance of counsel when preparing a petition and even the failure of trial counsel to forward a copy of the file to a petitioner has been found to *not* constitute good cause. See Phelps v. Director Nevada Department of Prisons, 104 Nev. 656, 660, 764 P.2d 1303 (1988); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

7. NRS 178.4871 states in pertinent part:

A person who has filed a post-conviction petition for habeas corpus:

2. Must not be admitted to bail pending a review of his petition unless:

(b) The petition presents substantial questions of law or fact and does not appear to be barred procedurally;

(c) The petitioner has made out a clear case on the merits; and

(d) There are exceptional circumstances deserving of special treatment in the interest of justice.

NRS 178.4871 (2) (b)(c) and (d).


ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby **DISMISSED**.

DATED this 19th day of September, 2006.


DISTRICT JUDGE RB

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY 
THOMAS M. CARROLL
Chief Deputy District Attorney
Nevada Bar #004232

TMC/mf/cu/SVU