

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS DEAN JENSEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48515

**FILED**

JUN 26 2007

MANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

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. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On November 24, 1998, the district court convicted appellant, pursuant to a jury verdict, of nine counts of sexual assault. The district court sentenced appellant to serve nine consecutive terms of life in the Nevada State Prison with the possibility of parole after twenty years. This court vacated one count and sentence, but affirmed the convictions for the remaining eight counts.<sup>1</sup> The remittitur issued on January 16, 2001. The district court filed an amended judgment on January 19, 2001, in compliance with this court's order.

On January 22, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

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<sup>1</sup>Jensen v. State, Docket No. 33516 (Order Affirming in Part and Reversing in Part, December 21, 2000).

State opposed the petition. The district court appointed counsel to represent appellant and indicated that an evidentiary hearing might be required to address appellant's claims. On August 20, 2002, post-conviction counsel filed a supplemental petition. Later, on June 9, 2003, the State moved to dismiss appellant's petition as untimely. On June 19, 2003, appellant filed a response to the motion to dismiss, and the State filed a subsequent response. On November 14, 2006, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than one year after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>2</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>3</sup> An impediment external to the defense may be demonstrated by a showing that interference by prison officials prevented the petitioner from filing a timely petition.<sup>4</sup>

In an attempt to demonstrate cause for the delay, appellant argued that interference by prison officials prevented him from meeting

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<sup>2</sup>See NRS 34.726(1). Although appellant dated and signed his petition within the period for filing a timely petition, the mailbox rule is inapplicable to habeas corpus proceedings; rather a habeas corpus petition must be filed in the district court within the applicable statutory period. See Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002) (declining to extend the mailbox rule to the filing of a habeas corpus petition).

<sup>3</sup>See id.

<sup>4</sup>See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

the January 17, 2002 deadline to file a timely petition. In particular, he asserted that his copy work was not completed correctly. Appellant claimed that the prison officials did not correctly copy an exhibit for a pleading he had filed in tribal court in South Dakota. The prison officials' failure to complete the task forced him to have family copy the document. He also stated that he drafted the copies of his petition for writ of habeas corpus by hand in order to avoid copy problems. Appellant did not establish cause for delay in filing his petition for writ of habeas corpus because the purported exhibit with which he experienced copy delays was not related to his petition and further, was eventually copied within the statutory period. Moreover, he did not establish that he experienced delays in copy work related to his petition as he copied the petitions by hand within the statutory period. Accordingly, the district court did not err in finding that this claim did not establish cause for untimely filing.

Appellant also claimed that he could not file a timely petition because prison officials withheld the form for filing the petition until the last minute. The form for filing a petition for writ of habeas corpus is set forth in NRS 34.735. While appellant stated that he was denied access to the law library, he undoubtedly had access to legal research materials as evidenced by his numerous filings citing legal authority, which were filed during the statutory period. Further, he signed and dated his petition, drafted on the appropriate form, on December 10, 2001, over one month prior to the filing deadline. Accordingly, the district court did not err in finding that this claim did not establish cause for untimely filing.

Lastly, appellant claimed that prison officials lost his first financial certificate and delayed returning his second certificate for two

months. Thus, he was not able to submit his habeas corpus petition and brass slips for legal postage until January 15, 2002. A prisoner who files a petition for writ of habeas corpus is not obligated to pay a fee for filing the petition.<sup>5</sup> A petitioner may file a motion to proceed in forma pauperis to accompany his petition for writ of habeas corpus if that petitioner is indigent and seeks the appointment of counsel.<sup>6</sup> The petitioner is not obligated to file such a motion at the time he files his petition for writ of habeas corpus.<sup>7</sup> Appellant completed his petition for writ of habeas corpus on December 10, 2001. However, he waited, purportedly for prison staff to complete his financial certificate, until January 14, 2002, to submit his petition. As he could have submitted his petition on December 10, 2001, and later submitted his motion to proceed in forma pauperis, he did not show that his delay in filing was due to any delay on the part of the prison staff returning his financial certificate.<sup>8</sup> Therefore, the district court did not err in finding that appellant did not establish cause for the delay.

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<sup>5</sup>NRS 19.013(4).

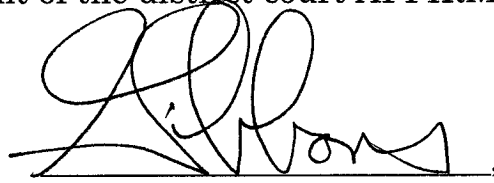
<sup>6</sup>NRS 34.750(1); NRS 34.735(3).

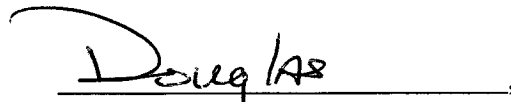
<sup>7</sup>See id.

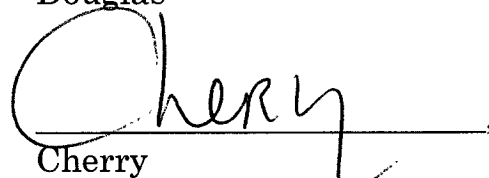
<sup>8</sup>See e.g., Miles v. State, 120 Nev. 383, 91 P.3d 588 (2004) (holding that petitioner's timely, but defective, unverified petition for writ of habeas corpus could be cured by filing an amended petition that relates back to the original filing).

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.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Janet J. Berry, District Judge  
Thomas Dean Jensen  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>9</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>We 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.