

IN THE SUPREME COURT OF THE STATE OF NEVADA

LINDSEY DENISE SAFBOM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48589

FILED

MAY 30 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. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On July 16, 2004, the district court convicted appellant, pursuant to a guilty plea, of trafficking in a schedule I controlled substance. The district court sentenced appellant to serve a term of 40 to 180 months in the Nevada State Prison. The court imposed the sentence consecutive to the sentence imposed in district court case C189215. Appellant did not file an appeal.

On February 11, 2005, appellant filed a motion for jail time credits. The district court denied the motion. Appellant did not file a direct appeal.

On June 20, 2005, appellant filed a proper person post-conviction writ of habeas corpus. The district court denied the petition. Appellant appealed, and this court affirmed the order of the district court.¹

Subsequently, appellant filed a petition for a writ of habeas corpus in the federal district court, claiming she was entitled to be

¹Safbom v. State, Docket No. 45580 (Order of Affirmance, October 21, 2005).

sentenced according to the terms of her plea agreement. The federal district court dismissed her petition without prejudice because her claim had not been raised in state post-conviction proceedings.

On November 11, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 November 13, 2006, the district court denied appellant's petition. This appeal followed.

Appellant filed her petition more than two years after the entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Moreover, appellant's petition was successive because she had previously filed a petition for writ of habeas corpus in which she asserted that she should have received the sentence for which she bargained in the plea agreement.³ Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.⁴

Appellant stated that she had been pursuing "remedial relief constantly through the courts." She further asserted that she needed to raise the claims in state court in order to meet the exhaustion requirements for filing a federal habeas corpus petition. The facts upon which appellant's instant claims rely were available during the statutory period and at the time of appellant's prior petition. Thus, appellant failed

²See NRS 34.726(1).

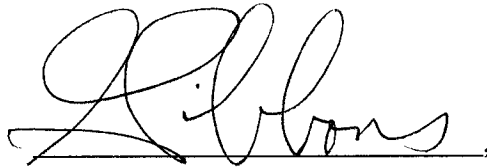
³See NRS 34.810(2).

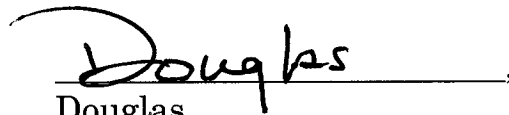
⁴See NRS 34.810(3); NRS 34.726(1).

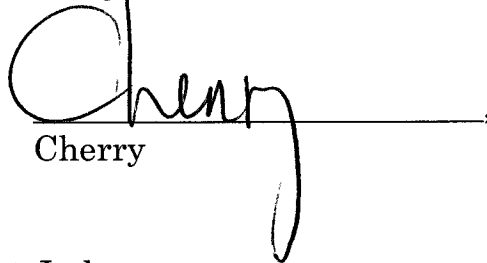
to demonstrate that an impediment external to the defense, such as her litigation of her claims in federal court, excused her failure to bring these claims in her previous state court petition.⁵ Accordingly, we conclude appellant has not demonstrated good cause sufficient to overcome the procedural bars to the instant petition.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. John P. Davis, District Judge
Lindsey Denise Safbom
Attorney General Catherine Cortez Masto/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk

⁵See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); see Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989) (holding that pursuit of federal writ was not good cause).

⁶See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).