

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMIEN D. ALLEN A/K/A DAIMEN
DEONN ALLEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48978

FILED

JUN 27 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

This is an appeal from an order of the district court denying appellant Damien Deonn Allen's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

On September 20, 2002, the district court convicted Allen, pursuant to an Alford plea,¹ of one count of attempted murder with the use of a deadly weapon and one count of attempted robbery with the use of a deadly weapon. The district court sentenced Allen to serve two consecutive prison terms of 32 to 144 months for the attempted murder and two consecutive prison terms of 32 to 144 months for the attempted robbery. The district court imposed the sentence for attempted robbery to run concurrently with the sentence for attempted murder. No direct appeal was taken.

On July 12, 2004, Allen, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus. The State filed a motion to dismiss the petition, arguing that it was untimely and therefore

¹See North Carolina v. Alford, 400 U.S. 25 (1970).

procedurally barred. Without conducting an evidentiary hearing, the district court denied Allen's petition. On appeal, we affirmed the district court's order.²

On October 3, 2006, Allen, with the assistance of counsel, filed a second post-conviction petition for a writ of habeas corpus. The State opposed the petition, the district court heard oral argument, and the district court denied the petition. This appeal follows.

Allen contends that the district court abused its discretion by failing to address the merits of his second post-conviction petition for a writ of habeas corpus. The application of statutory procedural default rules to post-conviction habeas petitions is mandatory.³ "NRS 34.726(1) provides that a post-conviction petition for a writ of habeas corpus must be filed within one year after entry of the judgment of conviction, if no direct appeal was taken, unless the petitioner demonstrates good cause for the delay."⁴ Good cause requires the petitioner to demonstrate that the delay was not his fault and that dismissal of the petition will unduly prejudice him.⁵

Allen's petition was filed almost four years after entry of the judgment of conviction. Therefore, Allen's petition was untimely. In an

²Allen v. State, Docket No. 44227 (Order of Affirmance, June 8, 2005).

³State v. Haberstroh, 119 Nev. 173, 180-81, 69 P.3d 676, 681-82 (2003).

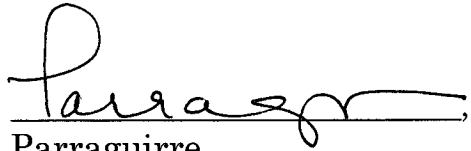
⁴Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

⁵NRS 34.726(1).


attempt to excuse his procedural default, Allen asserted that "the failure of the district court to address the nature of [his] ineffective assistance claims in 2004 is a cause for delay which is not of [his] fault or creation." However, Allen's assertion is belied by the record. The district court did not address the merits of Allen's 2004 petition because he failed to file the petition within the statutory period.

Having concluded that Allen failed to demonstrate that the district court erred by denying his petition, we

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Hardesty

 J.
Saitta

cc: Hon. Kenneth C. Cory, District Judge
Kirk T. Kennedy
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk