

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRELL JOHN GAUL, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49138

FILED

AUG 22 2007

BY 
JANETTE M. BLDOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On June 17, 1992, the district court convicted appellant, pursuant to a jury verdict, of six counts of robbery with the use of a deadly weapon, two counts of conspiracy to commit robbery, and one count of burglary.¹ The district court sentenced appellant to serve multiple consecutive and concurrent terms totaling forty-eight years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.² The remittitur issued on April 19, 1994.

¹On July 20, 1992, the district court entered an amended judgment of conviction that corrected a typographical error contained in the sentencing structure.

²Gaul v. State, Docket No. 23590 (Order Dismissing Appeal, March 31, 1994).

On December 15, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed and moved to dismiss the petition, arguing that the petition was procedurally time barred. Moreover, the State specifically pleaded laches. 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 March 2, 2007, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant raised several claims of ineffective assistance of counsel. Appellant also claimed that his Miranda³ rights were violated, the district court erred in admitting evidence and denying motions, the prosecution engaged in misconduct, and insufficient evidence supported the deadly weapon enhancement.

Appellant filed his petition more than twelve years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ Good cause must be an impediment external to the defense.⁶ Further, because the State

³Miranda v. Arizona, 384 U.S. 436 (1966).

⁴See NRS 34.726(1).

⁵See id.

⁶See Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).

specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁷

In an attempt to excuse his procedural defects, appellant argued that he just found out that the public defender who represented him resigned because the public defender was charged with misconduct. Specifically, appellant argued that his public defender was charged with getting his clients too much time in prison. Based upon our review of the record on appeal, we conclude that the district court did not err by dismissing appellant's petition.


Appellant failed to demonstrate that the factual and legal bases for his claims were not reasonably available to him during the statutory time period for filing a post-conviction petition for a writ of habeas corpus.⁸ Although appellant recently learned of his public defender's alleged misconduct in other cases, appellant could have challenged any alleged misconduct by his public defender in his case within the one-year statutory time period, and appellant failed to demonstrate that an impediment external to the defense prevented him from doing so. Additionally, appellant did not respond to the State's plea of laches, and therefore appellant failed to overcome the presumption of prejudice to the State. Accordingly, we affirm the order of the district court.

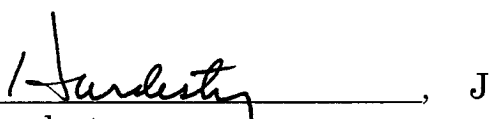
⁷See NRS 34.800(2).

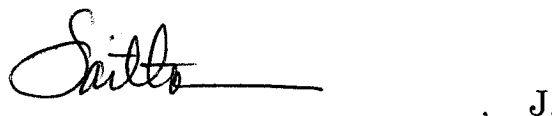
⁸See Hathaway v. State, 119 Nev. 248, 253, 71 P.3d 503, 507 (2003).

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Donald M. Mosley, District Judge
Darrell John Gaul Jr.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).