

IN THE SUPREME COURT OF THE STATE OF NEVADA

TOMASI LAUTAHA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49148

FILED

OCT 15 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On October 18, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count of engaging in business as a contractor without having a license. The district court sentenced appellant to serve a term of twelve to thirty months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a term not to exceed 60 months. The district court ordered that the sentence be served consecutively with the sentence imposed in district court case number CR01-0623, but that the probationary terms in each case were to be served concurrently. On August 5, 2003, the district court revoked appellant's probation. Neither a direct appeal nor an appeal from the order revoking probation was taken.

On August 14, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. 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 February 20, 2007, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant claimed: (1) trial counsel was ineffective for failing to conduct reasonable consultations with defendant and conduct reasonable investigation; (2) trial counsel was ineffective for failing to employ an interpreter to facilitate communications and ensure that appellant understood the proceedings; (3) trial counsel was ineffective for failing to inform appellant of the full range of punishment and consequences of the guilty plea; (4) trial counsel was ineffective for failing to file a pretrial motion to dismiss the charges; and (5) trial counsel was ineffective for failing to advise appellant of the right to appeal or file an appeal on his behalf.

Appellant filed his petition almost five years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.¹ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.²

Appellant argued that his trial counsel's failure to advise him of the right to a direct appeal and the failure to file a direct appeal excused his procedural defects.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant had failed to demonstrate good cause to excuse his delay. Absent special circumstances, a claim that trial counsel failed to file an appeal on a petitioner's behalf does not constitute good cause to excuse the delay in


¹See NRS 34.726(1).

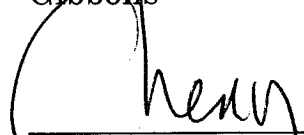
²See id.


filing a post-conviction petition for a writ of habeas corpus.³ Appellant's claims were reasonably available within the one-year period for filing a timely post-conviction petition for a writ of habeas corpus, and appellant failed to demonstrate good cause for his failure to raise his claims in a timely petition.⁴ Therefore, we affirm the order of the district court dismissing the petition as procedurally time barred.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

³See Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998) (holding that the failure to file a direct appeal is not good cause for a late petition); see also Hathaway v. State, 119 Nev. 248, 254-55, 71 P.3d 503, 507-08 (2003) (clarifying that the failure to file a direct appeal may in certain circumstances constitute good cause where the defendant asked counsel to file an appeal and reasonably believed counsel had filed an appeal). Notably, appellant did not allege that he asked counsel to file an appeal or that he believed an appeal had been filed on his behalf.

⁴See Hathaway, 119 Nev. 248, 71 P.3d 503.

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Connie J. Steinheimer, District Judge
Tomasi Lautaha
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk