

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDIE BELL A/K/A EDDIE E. BELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49362

**FILED**

DEC 10 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY S. Young  
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; Jennifer Togliatti, Judge.

On December 4, 2003, the district court convicted appellant, pursuant to a guilty plea, of two counts of burglary and two counts of grand larceny. The district court then adjudicated appellant a habitual criminal and sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after ten years for the burglary counts and two concurrent terms of 48 to 120 months for the grand larceny counts. This court affirmed appellant's appeal from his

judgment of conviction and sentence.<sup>1</sup> The remittitur issued on December 28, 2004.

On July 6, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On October 12, 2005, the district court denied the petition. This court affirmed the order of the district court on appeal.<sup>2</sup>

On February 20, 2007, appellant filed another proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition and appellant filed a reply. On May 15, 2007, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his habeas corpus petition approximately three years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>3</sup> Appellant's petition was also an

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<sup>1</sup>Bell v. State, Docket No. 42569 (Order of Affirmance, December 1, 2004).

<sup>2</sup>Bell v. State, Docket No. 46241 (Order of Affirmance, March 22, 2006).

<sup>3</sup>See NRS 34.726(1). Despite appellant's contention to the contrary, this petition is time barred. The time to file a post-conviction petition of habeas corpus expired on December 28, 2005, one-year from the issuance of the remittitur in appellant's direct appeal. Previously filing petitions in  
*continued on next page . . .*

abuse of the writ because he had previously filed a petition for a writ of habeas corpus on July 6, 2005.<sup>4</sup> Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.<sup>5</sup>

Appellant argued that his procedural defect should be excused because the State failed to adequately address the issues raised in his first petition and failed to adequately address the question presented by the federal district court, specifically whether appellant exhausted state remedies. Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing appellant's petition as procedurally barred. The State and the district court adequately addressed the issues raised in the appellant's first petition. Additionally, any alleged failure on the part of the State to address the issue of exhaustion of remedies does not amount to good cause to excuse the

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*... continued*

this court or federal district court did not extend or toll this statutory time limitation.


<sup>4</sup>See NRS 34.810(2). To the extent that appellant failed to allege new or different grounds of relief, his petition was successive, and therefore, barred. *Id.*

<sup>5</sup>See NRS 34.726(1); NRS 34.810(3).

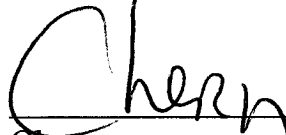
procedural defects in this writ.<sup>6</sup> Therefore, we affirm the order of the district court.

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>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

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

Gibbons

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

Cherry

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

Saitta

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<sup>6</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).

<sup>7</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>8</sup>On May 11, 2007, appellant filed a motion for joinder of claims and remedies, seeking to join this appeal with Docket No. 49200. Because we dismissed appellant's appeal in Docket No. 49200 due to a jurisdictional defect on May 23, 2007, we decline to join the appeals.

cc: Hon. Jennifer Togliatti, District Judge  
Eddie Bell  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk