

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH WAYNE WINSLETT,  
Appellant,  
vs.  
WARDEN, NORTHERN NEVADA  
CORRECTIONAL CENTER, DON  
HELLING,  
Respondent.

No. 49432

**FILED**

NOV 01 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY Alvarado  
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. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On October 30, 2003, the district court convicted appellant, pursuant to a guilty plea, of attempted sexual assault (Count 1) and battery with the intent to commit sexual assault (Count 2). The district court sentenced appellant to serve a term of 53 to 240 months for Count 1 and a concurrent term of 24 to 84 months for Count 2 in the Nevada State Prison. This court affirmed appellant's convictions and sentences on appeal.<sup>1</sup> The remittitur issued on April 20, 2004.

On January 9, 2007, appellant filed a proper person "Request for Leave to File Petition for Writ of Habeas Corpus (Post-Conviction) Due to Exigent Circumstances," in which he argued that good cause existed to

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<sup>1</sup>Winslett v. State, Docket No. 42429 (Order of Affirmance, March 24, 2004).

excuse the untimely filing of a post-conviction petition for a writ of habeas corpus. On February 28, 2007, the district court declined to address appellant's argument because appellant had not yet filed a petition for a writ of habeas corpus. On April 6, 2007, 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 April 19, 2007, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition approximately three years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>2</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>3</sup>

In an attempt to demonstrate cause for the delay, appellant claimed that another inmate had promised to help appellant file his petition. That inmate led appellant to believe that the inmate's corporate attorneys were preparing to file a petition on appellant's behalf. Two years later, appellant discovered that no petition had been filed on his behalf.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate adequate cause to excuse his delay. Appellant's decision to trust another prisoner to procure appellant's post-conviction counsel

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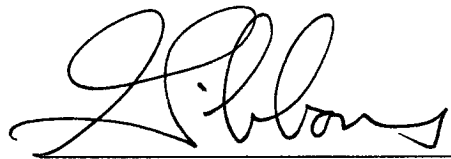
<sup>2</sup>See NRS 34.726(1).

<sup>3</sup>See id.

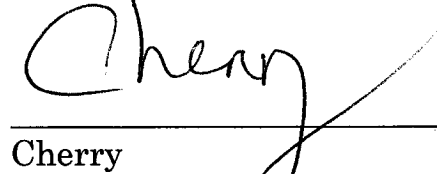
caused the untimely filing. Appellant did not assert or demonstrate that the State or prison officials prevented him from filing a timely petition. Thus, appellant failed to demonstrate that an "impediment external to the defense" excused his procedural defects.<sup>4</sup> Therefore, the district court did not err in determining that appellant's post-conviction petition for a writ of habeas corpus was procedurally 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.<sup>5</sup> Accordingly, we

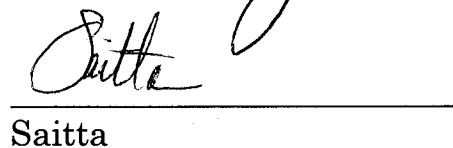
ORDER the judgment of the district court AFFIRMED.<sup>6</sup>

 J.

Gibbons

 J.

Cherry

 J.

Saitta

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<sup>4</sup>See Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).

<sup>5</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>6</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Steven P. Elliott, District Judge  
Kenneth Wayne Winslett  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk