

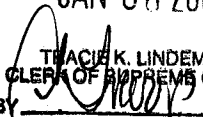
IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY ALAN O'GUINN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49519

FILED

JAN 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On January 12, 2001, the district court convicted appellant, pursuant to a plea of guilty but mentally ill, of one count of open or gross lewdness, and two counts each of burglary and sexual assault of a victim sixty-five years or older. Additionally, appellant was adjudicated a habitual criminal. The district court sentenced appellant to serve four concurrent terms of life in the Nevada State Prison with the possibility of parole after ten years and one concurrent term of one year in the Clark County Detention Center. On appeal, this court remanded the matter to the district court to allow appellant the opportunity to withdraw his plea and enter a plea of not guilty by reason of insanity.¹ The remittitur issued on January 14, 2003. Appellant subsequently declined to withdraw his guilty plea.

¹O'Guinn v. State, 118 Nev. 849, 59 P.3d 488 (2002).

On June 13, 2003, appellant filed a proper person motion to correct an illegal sentence in the district court. The district court denied the motion, and on appeal, this court affirmed the district court's decision.²

On February 5, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed 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 May 11, 2007, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than four years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴

In an attempt to excuse his procedural defects, appellant argued that he had good cause for the delay because he was mentally ill and his mental deficiencies made it difficult for him to understand the legal complexities of his case. Appellant failed to demonstrate that an impediment external to the defense prevented him from filing a timely petition.⁵ Moreover, it appears that appellant could have presented the

²O'Guinn v. State, Docket No. 41849 (Order of Affirmance, May 26, 2004).

³See NRS 34.726(1).

⁴See id.

⁵See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that a petitioner's organic brain damage or poor assistance from inmate law clerks did not amount to good cause).

claims he set forth in his petition for extraordinary relief in a timely petition for a writ of habeas corpus filed in the district court in the first instance.⁶ Therefore, the district court did not err in denying appellant's petition.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

⁶Appellant stated that he had filed a petition for extraordinary relief, which this court refused to decide on the merits. This court denied the petition for extraordinary relief noting that the proper vehicle for such claims was a petition for a writ of habeas corpus. See O'Guinn v. State, Docket No. 44241 (Order Denying Petition, December 2, 2004). Appellant stated that after this court dismissed his petition for extraordinary relief, he filed a motion in the district court seeking to expand time for filing a petition for writ of habeas because he had missed the filing deadline due to his mental illness. However, the pursuit of an original petition in this court is not good cause.

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Jackie Glass, District Judge
Roy Alan O'Guinn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk