

IN THE SUPREME COURT OF THE STATE OF NEVADA


DANIEL T. LEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49905

FILED

ORDER OF AFFIRMANCE

NOV 14 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

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; Joseph T. Bonaventure, Judge.

On March 24, 2005, the district court convicted appellant, pursuant to a guilty plea, of robbery with the use of a deadly weapon (Count 1) and battery with the use of a deadly weapon resulting in substantial bodily harm (Count 2). The district court sentenced appellant to serve two equal and consecutive terms of 36 to 180 months for Count 1 and a consecutive term of 72 to 180 months for Count 2 in the Nevada State Prison. This court dismissed appellant's appeal as untimely.¹

On August 3, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition and moved to dismiss arguing that it was untimely. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary

¹Lee v. State, Docket No. 45237 (Order Dismissing Appeal, July 6, 2005).

hearing. On July 5, 2007, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition over one year after the entry of the judgment of conviction. Thus, appellant's petition was untimely.² Appellant's petition was procedurally barred absent a demonstration of good cause for the delay and undue prejudice.³ Claims that were reasonably available during the statutory period for filing a petition do not constitute good cause to excuse an untimely petition.⁴

In an apparent attempt to demonstrate cause for the delay, appellant argued that his counsel's failure to file a requested direct appeal excused his untimely filing. However, appellant did not assert that his counsel's failure to file an appeal was unknown to him within the statutory period.⁵ Therefore, we conclude that the district court did not err in finding that appellant's petition was procedurally barred.

²See NRS 34.726(1); see also Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998) (providing "that the one-year period for filing a post-conviction habeas corpus petition begins to run from the issuance of the remittitur from a timely direct appeal to this court from the judgment of conviction or from the entry of the judgment of conviction if no direct appeal is taken.") (emphasis in original).


³See NRS 34.726(1).

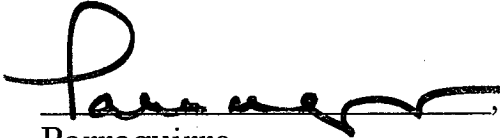
⁴Hathaway v. State, 119 Nev. 248, 253, 71 P.3d 503, 506 (2003).

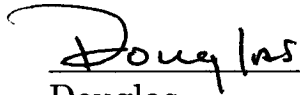
⁵See id., 119 Nev. at 254, 71 P.3d at 507 (holding that good cause was shown where petitioner "requested that his attorney file an appeal, his attorney had affirmatively indicated that he would file an appeal, he believed that his attorney had filed an appeal on his behalf, and he filed his habeas corpus petition within a reasonable time after learning that his attorney had not filed an appeal."); Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 782 (1998) (holding that "the mere allegation that a
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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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Chief Judge, Eighth Judicial District
Hon. Joseph T. Bonaventure, Senior Judge
Daniel T. Lee
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

... continued

claimant was deprived of a direct appeal without his or her consent does not alone constitute good cause and prejudice").

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).