

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRISTI LEANN MILLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50401

**FILED**

APR 10 2008

TRACIE K. LINDEMAN  
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 a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On November 23, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of second degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's untimely appeal from her judgment of conviction and sentence for lack of jurisdiction.<sup>1</sup>

On April 30, 2007, 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, and appellant filed a response. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint

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<sup>1</sup>Miller v. State, Docket No. 46150 (Order Dismissing Appeal, December 6, 2005).

counsel to represent appellant or to conduct an evidentiary hearing. On September 13, 2007, the district court dismissed appellant's petition. This appeal followed.

Appellant filed her petition more than two years after entry of the judgment of conviction. 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> A petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice.<sup>4</sup> In order to demonstrate a fundamental miscarriage of justice, a petitioner must make a colorable showing of actual innocence of the crime—"it is more likely than not that no reasonable juror would have convicted [her] absent a constitutional violation."<sup>5</sup> When the conviction is based upon a guilty plea, the petitioner must demonstrate that she is innocent of charges foregone in the plea bargaining process.<sup>6</sup>

In an attempt to demonstrate cause for the delay, appellant argued that she was without legal assistance and that she had not

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<sup>2</sup>See NRS 34.726(1). Because appellant's direct appeal was dismissed as untimely, the proper date for calculating the one-year deadline for filing a timely post-conviction petition for a writ of habeas corpus is the date the judgment of conviction was entered in the district court. See Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998).

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

<sup>4</sup>Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

<sup>5</sup>Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001).

<sup>6</sup>Bousley v. United States, 523 U.S. 614, 623-24 (1998).

received a copy of her case file. Appellant further argued that she had only an eighth grade education and was taking various medications for depression and a sleep disorder. Finally, appellant claimed that she was actually innocent because she was at work when her child was fatally injured by appellant's live-in boyfriend and co-defendant.

Based upon our review of the record on appeal, we conclude that the district court did not err in dismissing the petition as procedurally time barred. Appellant failed to demonstrate that an impediment external to the defense prevented her from filing a timely petition.<sup>7</sup> Poor assistance from an inmate law clerk, trial counsel's failure to send case files, and a petitioner's limited education are not impediments external to the defense.<sup>8</sup> Appellant failed to demonstrate that any medications prevented her from filing a timely petition. Appellant had no right to the appointment of post-conviction counsel to assist her in the post-conviction proceedings.<sup>9</sup> Finally, appellant failed to demonstrate that she was actually innocent. The record indicates that the State's theory of the case and the basis for appellant's guilt was not that she had actually physically abused her daughter, but that she had left her daughter in the care of the co-defendant knowing the co-defendant was abusive and that unjustifiable pain and injury to the victim were a foreseeable consequence

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<sup>7</sup>See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

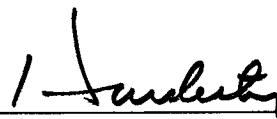
<sup>8</sup>See Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

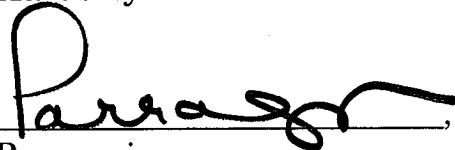
<sup>9</sup>See NRS 34.750(1) (providing that the appointment of post-conviction counsel is discretionary).


of appellant's neglect and endangerment. Thus, the fact that appellant was not present in the home when paramedics were called for assistance when her daughter was nonresponsive does not establish her innocence. Appellant further failed to demonstrate that she was innocent of the child abuse and neglect of her son, a charge dismissed pursuant to the plea negotiations. Therefore, the petition was properly dismissed.

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>10</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

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

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<sup>10</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).