

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROLAND WALTER JENKINS,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, JACK
PALMER,
Respondent.

No. 50440

FILED

MAR 10 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. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

On June 21, 2002, the district court convicted appellant, pursuant to a jury verdict, of one count of lewdness with a minor under the age of 14. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after 10 years.¹

¹Appellant was also found guilty of one count of attempted sexual assault on a minor under the age of 14. The district court did not sentence appellant on the count of attempted sexual assault of a minor under the age of 14 as it determined that the count was redundant and originated out of the same incident.

This court affirmed appellant's judgment of conviction and sentence.² The remittitur issued on February 3, 2004.

On February 2, 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 September 14, 2007, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition almost 3 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 demonstrate good cause for the delay, appellant argued that his delay was caused by: (1) his inability to retain counsel; (2) his inability to obtain the help of a prison law clerk because he could not reveal his status as a sex offender without placing himself in

²Jenkins v. State, Docket No. 39989 (Order of Affirmance, January 8, 2004).

³See NRS 34.726(1).

⁴See id.

physical danger at the hands of other inmates; (3) the lack of resources at the law library of the prison where he is incarcerated; and (4) his inability to communicate with his incarcerated siblings, who were attempting to help him with the preparation of the instant petition.

Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate cause for his delay in filing the instant petition. Appellant's inability to retain counsel is not good cause as it is not an impediment external to the defense.⁵ Appellant is not entitled to the appointment of counsel in a post-conviction proceeding.⁶ Furthermore, appellant failed to demonstrate that he was not provided with access to adequate legal materials or that he could not obtain the help of a prison law clerk. Moreover, appellant's purported inability to receive assistance from his brothers is not good cause.⁷ Therefore, we conclude that the district court did not err in denying appellant's petition as procedurally barred.

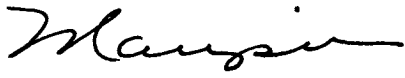
⁵Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁶McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996).


⁷See generally Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988).

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.⁸ Accordingly, we

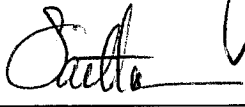
ORDER the judgment of the district court AFFIRMED.⁹

 _____, J.

Maupin

 _____, J.

Cherry

 _____, J.

Saitta

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We have considered all proper person documents filed or received in this matter, including the following: appellant's motion to extend time, appellant's motion for the appointment of counsel, appellant's motion for transcripts at the State's expense, and appellant's "emergency motion" for the enlargement of time and clarification/status check. We conclude that the relief requested is not warranted.

cc: Hon. Robert W. Lane, District Judge
Roland Walter Jenkins
Attorney General Catherine Cortez Masto/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk