

IN THE SUPREME COURT OF THE STATE OF NEVADA

OMAR TERRELL TAYLOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50602

FILED

APR 18 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 appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On September 2, 1997, the district court convicted appellant, pursuant to an Alford plea,¹ of one count of first-degree murder and one count of manslaughter. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole for the murder conviction and a concurrent term of 26 to 120 months for the manslaughter conviction. Taylor did not file a direct appeal.

On November 3, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On

¹North Carolina v. Alford, 400 U.S. 25 (1970).

January 27, 2004, the district court dismissed his petition as untimely. On appeal, this court affirmed the district court's decision on appeal.²

On July 18, 2007, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, arguing that the petition was untimely. Moreover, the State specifically pleaded laches. 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 October 22, 2007, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition approximately 10 years after entry of the judgment of conviction. 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 Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁵

In an attempt to demonstrate cause for the delay, appellant argued that he could not previously present his claims because he was incompetent to pursue post-conviction relief due to his mental illness and

²Taylor v. State, Docket No. 42852 (Order of Affirmance, August 19, 2004).

³See NRS 34.726(1).

⁴See id.

⁵See NRS 34.800(2).

use of psychotropic medication. Appellant also claimed that he believed that his counsel had filed a direct appeal, that his counsel failed to explain the consequences of an Alford plea to appellant and told appellant that he would only serve 20 years.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that this petition was procedurally time barred and barred by laches. Appellant failed to demonstrate that an impediment external to the defense excused his procedural defect.⁶ Any alleged incompetence was not good cause to excuse the almost ten-year delay in the filing of this petition.⁷ Appellant's appeal deprivation claim and other claims of ineffective assistance of counsel were reasonably available earlier, and thus, these claims would not constitute good cause in the instant case.⁸ Finally, appellant failed to overcome the presumption of prejudice to the State given the lengthy delay in this case.

⁶See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁷See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (providing that organic brain damage and poor assistance from inmate law clerks was not an impediment external to the defense).

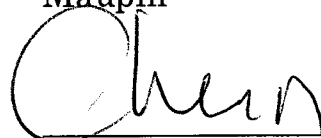
⁸See Hathaway v. State, 119 Nev. 248, 252, 71 P.2d 503, 506 (2003) (recognizing that in order to constitute adequate cause to excuse a procedural defect a claim of ineffective assistance of counsel must not be procedurally defaulted).

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.⁹ Accordingly, we

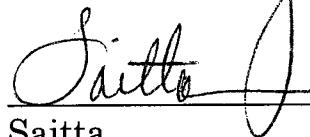
ORDER the judgment of the district court AFFIRMED.¹⁰

 _____ J.

Maupin

 _____ J.

Cherry

 _____ J.

Saitta

cc: Hon. Jennifer Togliatti, District Judge
Omar Terrell Taylor
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰We 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.