

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAFORAL KING,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50847

FILED

DEC 02 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On September 29, 2004, the district court convicted King, pursuant to a guilty plea, of one count of burglary. The district court adjudicated King a habitual criminal and sentenced him to serve a prison term of 60 to 150 months. This court dismissed King's untimely direct appeal based on lack of jurisdiction.¹ The remittitur issued on February 15, 2005.

On May 2, 2005, King filed a proper person motion to correct an illegal sentence. The motion was dismissed by the district court on May 17, 2006, after appointed counsel requested it withdrawn.

On July 27, 2007, King filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition.

¹King v. State, Docket No. 44397 (Order Dismissing Appeal, January 20, 2005).

Following argument, the district court denied King's petition on November 28, 2007. This appeal followed.

On appeal, King asserts that the district court erred by denying his petition as untimely. We disagree.

King's petition was filed two and one half years after the remittitur issued from King's direct appeal. King's petition was untimely filed, and therefore, procedurally barred absent a demonstration of good cause.² "[G]ood cause necessary to overcome a procedural bar must be some impediment external to the defense."³ Generally, a lower court's determination regarding the existence of good cause will not be disturbed absent an abuse of discretion.⁴

In an attempt to excuse his procedural defects, King argued that his delay in filing the petition should be excused because he had no "meaningful" access to the law library. However, King did not specify just why or how his access was limited. Further, the filing of King's motion to correct an illegal sentence within the prescribed time period for filing his petition demonstrated that King had some access to legal materials. King also claims that good cause supported the untimely filing of his petition because he was deprived of a direct appeal without his consent. However, King's appeal deprivation claim is not good cause to overcome the procedural bar because the claim was reasonably available within the

²See NRS 34.726(1).

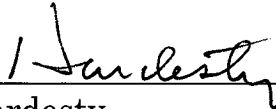
³Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998); see also Murray v. Carrier, 477 U.S. 478, 488 (1986).

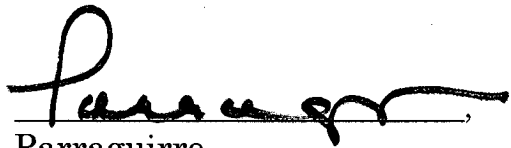
⁴See Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

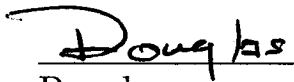
proscribed period for filing the post conviction petition.⁵ Accordingly, we conclude that the district court did not err in denying King's petition.

Having considered King's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Michelle Leavitt, District Judge
Jose C. Pallares
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁵Hathaway v. State, 119 Nev. 248, 251, 71 P.3d 503, 505 (2003) .