

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK MONTOGNESE,

No. 34614

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUN 12 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.

On June 13, 1997, appellant was convicted, pursuant to a guilty plea, of sexual assault and lewdness with a child under the age of fourteen years. Appellant did not directly appeal from his judgment of conviction until September 12, 1997. On December 10, 1997, this court concluded that the appeal was untimely and ordered the appeal dismissed for lack of jurisdiction.¹

On June 23, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. In an apparent attempt to overcome any procedural bar, appellant alleged that he received ineffective assistance of counsel, which resulted in the deprivation of a direct appeal. The State moved that the petition be dismissed as untimely. The district court denied the motion to dismiss concluding that good cause existed for any delay because "[i]t

¹Montognese v. State, Docket No. 31044 (Order Dismissing Appeal, December 10, 1997).

is reasonable for a person, lay or attorney, to count the time to file a Petition for a Writ of Habeas Corpus from one year following the disposition of the appeal." The court then appointed counsel, who filed a supplemental petition. On November 30, 1998, the State moved the district court to reconsider the motion to dismiss based on this court's November 25, 1998 decision in Dickerson v. State.² Appellant opposed the motion. The district court denied the motion to reconsider, noting that in appellant's opposition to the motion he had alleged as cause for the delay in filing his petition that he was in the Nevada State Prison and therefore had no control over the mail or access to his case file or an attorney. Based on these allegations, the court concluded that appellant had demonstrated good cause for the delay. On June 4, 1999, after conducting an evidentiary hearing, the district court denied appellant's petition on the merits. This appeal followed.

We conclude that the district court erred in considering appellant's petition on the merits. Appellant did not timely appeal from his judgment of conviction, and he filed his petition one year and ten days after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally time-

²114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998) (affirming dismissal of untimely petition and holding that one-year period for filing a timely 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").

³See NRS 34.726(1); Dickerson, 114 Nev. at 1087, 967 P.2d at 1133-34.

barred absent a demonstration of cause for the delay and undue prejudice.⁴ Moreover, appellant failed to overcome the procedural bar by demonstrating adequate cause for the delay.

Although this court will normally defer to the district court's finding of good cause,⁵ the record on appeal shows that appellant failed to demonstrate adequate cause as a matter of law. "Generally, 'good cause' means a 'substantial reason; one that affords a legal excuse.'"⁶ Good cause necessary to overcome a procedural bar must be some impediment external to the defense.⁷ We conclude that good cause was not demonstrated by appellant's misinterpretation of filing requirements, or his allegations of lack of access to an attorney or his case file, lack of control over the mail, or deprivation of his right to a direct appeal caused by ineffective assistance of counsel.⁸ Although given adequate opportunity to respond to the State's motion to dismiss and motion for reconsideration, appellant failed to otherwise demonstrate adequate cause to excuse his delay. Thus, appellant's petition was procedurally time-barred.

⁴See NRS 34.726(1).

⁵See Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

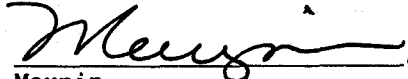
⁶See id. (quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw. 1981)).

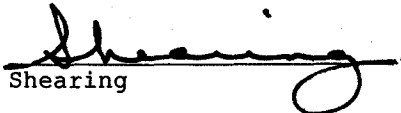
⁷Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998).

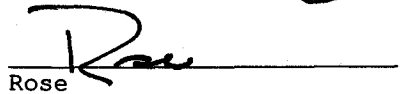
⁸See Dickerson, 114 Nev. at 1088, 967 P.2d at 1134; Harris, 114 Nev. at 959, 964 P.2d at 787; Hood v. State, 111 Nev. 335, 337-38, 890 P.2d 797, 798 (1995); Colley, 105 Nev. at 236, 773 P.2d at 1230; Passanisi v. Director, Dep't Prisons, 105 Nev. 63, 65-66, 769 P.2d 72, 73-74 (1989); Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988).

Nevertheless, we affirm the order of the district court because the district court reached the correct result in denying appellant's petition.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


Maupin, C.J.


Shearing, J.


Rose, J.

cc: Hon. Jerome M. Polaha, District Judge
Attorney General
Washoe County District Attorney
Karla K. Butko
Washoe County Clerk

⁹See Franco v. State, 109 Nev. 1229, 1241, 866 P.2d 247, 255 (1993) (this court will affirm correct result of trial court's ruling even on different grounds).

¹⁰The Honorable Deborah A. Agosti, Justice, voluntarily recused herself from participation in the decision of this matter.