

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL SCOTT HILLCOAT,

No. 34658

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

MAY 16 2001

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

On December 9, 1996, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve a minimum term of 40 months to a maximum term of 156 months for the primary offense and an equal and consecutive term for the deadly weapon enhancement. Appellant did not file a direct appeal.

On April 21, 1998, 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 July 10, 1998, the district court denied appellant's petition pursuant to NRS 34.726(1). This court dismissed appellant's subsequent appeal.¹

On May 10, 1999, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The

¹Hillcoat v. State, Docket No. 32786 (Order Dismissing Appeal, July 14, 1999).

district court declined to appoint counsel. On August 23, 1999, after conducting an evidentiary hearing, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately two and one-half years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Moreover, appellant's petition was an abuse of the writ because he raised several new claims and he had previously filed a post-conviction petition for a writ of habeas corpus.³ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁴

In an attempt to excuse his procedural defects, appellant argued: (1) he had been transferred to different institutions; (2) he had tried to get legal assistance but inmate law clerks were too busy to help him, not trained in law, or not knowledgeable enough to help him; (3) his signature was forged on his first petition and his first petition was submitted without his consent; (4) his mother had retained an attorney to help him with the post-conviction proceedings but he never heard from the attorney, and (5) at all times his legal papers were either in a property room, en route to him, or in the hands of an inmate law clerk. Even assuming, without deciding, that there were irregularities relating to appellant's first petition that should excuse the filing of a second petition, appellant's first petition was untimely and his second petition was untimely. Appellant failed to demonstrate adequate cause to excuse the entire length of his delay. Therefore, we conclude that the district

²See NRS 34.726(1).


³See NRS 34.810(2).

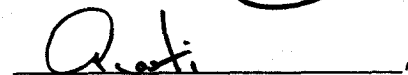
⁴See NRS 34.726(1); NRS 34.810(3).

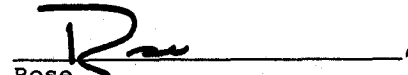
court did not err in concluding that appellant failed to demonstrate adequate cause to excuse his procedural defects.⁵

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Rose

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Michael Scott Hillcoat
Clark County Clerk

⁵See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense); see also McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996) (holding that absent a constitutional or statutory right to counsel, there is no right to counsel or to the effective assistance of counsel in post-conviction proceedings); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995) (holding that trial counsel's failure to send a petitioner his files did not constitute good cause to excuse the procedural default); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that limited intelligence and reliance on an inmate law clerk unschooled in the law do not establish good cause).

⁶See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

⁷We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.



Office of the County Clerk

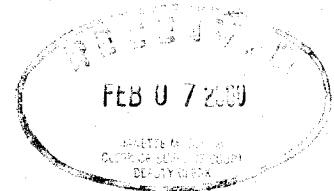
Shirley B. Parraguirre
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Commissioner of Civil Marriages

Sue E. Berfield
Assistant County Clerk

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February 3, 2000

Janette Bloom
Clerk of the Supreme Court
Supreme Court Building
Capitol Complex
Carson City, Nevada 89710



Re: STATE OF NEVADA VS MICHAEL S. HILLCOAT
S.C. CASE: 34658
D.C. CASE: C135089

Dear Ms. Bloom:

Per the Supreme Court Order dated October 18, 1999 enclosed please find a *certified copy* of the complete trial court record for the above referenced case. This record is comprised of two volumes-pages numbered 1 through 325.

Cordially yours,
SHIRLEY B. PARRAGUIRRE, COUNTY CLERK


Johnna Vigil, Deputy Clerk

cc: Stewart L. Bell, District Attorney

Ex-Officio Clerk of:
Eighth Judicial District Court • Board of County Commissioners • Board of Equalization
Clark County Liquor and Gaming Board • Kyle Canyon Water District
Clark County Sanitation District • General Obligation Bond Commission