

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL CASAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51760

FILED

JUN 03 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from an order of the district court dismissing appellant Manuel Casas' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On October 14, 2005, the district court convicted appellant, pursuant to a guilty plea, of two counts of assault with the use of a deadly weapon and one count of possession of a firearm by an ex-felon. The district court sentenced appellant to serve two consecutive terms of 18 to 60 months in the Nevada State Prison for the assault counts, and a concurrent term of 18 to 60 months for possession of a firearm by an ex-felon. No direct appeal was taken.

On March 5, 2008, 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 8, 2008, the district court dismissed appellant's petition. This appeal followed.

Appellant filed his petition more than two years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice. See id.


In an attempt to demonstrate cause for the delay, appellant argued that he was denied access to either the prison law library or to a prison law clerk, leaving him without resources to file his petition. As this court stated in Hathaway v. State, "[i]n order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Impediments external to the defense include "a showing 'that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials made compliance [with statutory time limits] impracticable.'" Id. (quoting Murray v. Carrier, 477 U.S. 478, 488 (1986) (internal citations omitted)) (internal quotation marks omitted). As established by the United States Supreme Court in Bounds v. Smith, this type of impediment may include a prison's failure to provide "meaningful" access to the courts through the provision of "adequate law libraries or adequate assistance from persons trained in the law." 430 U.S. 817, 828 (1977), limited by Lewis v. Casey, 518 U.S. 343 (1986). However, prisons need not provide assistance beyond that necessary to allow prisoners "reasonably adequate opportunity to file nonfrivolous legal claims challenging their convictions." Lewis, 518 U.S. at 356.

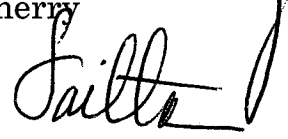
Our review of the record on appeal reveals that the district court abused its discretion in dismissing appellant's petition as procedurally barred without holding an evidentiary hearing. If appellant's

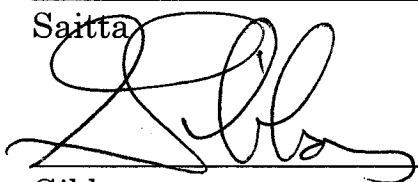
claim that he had been completely denied access to legal resources by prison officials was true, this may have been sufficient to demonstrate good cause for his delay in filing his petition. Therefore, we conclude that the district court abused its discretion in dismissing appellant's petition without first holding an evidentiary hearing to consider appellant's access to legal resources.¹

Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

¹On remand, the district court should explore the prison policies regarding research access for segregated prisoners and consider whether the policies provide reasonably adequate access to legal resources as set forth in Lewis.

cc: Hon. Jackie Glass, District Judge
Manuel Casas
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk