

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDAN CORREIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51808

FILED

MAY 15 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Brendan Correia's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On October 18, 2000, the district court convicted Correia, pursuant to a guilty plea, of assault with a deadly weapon and robbery with the use of a deadly weapon. The district court sentenced Correia to a prison term of 28 to 72 months for assault and two consecutive terms of 48 to 156 months for robbery with the use of a deadly weapon. Correia did not file a direct appeal.

On January 18, 2007, Correia filed a proper person "Motion to Dismiss Count of Indictment for Failure to State a Crime with Suggestion" in the district court. The district court appointed Correia counsel and counsel filed a supplemental post-conviction petition for a writ of habeas corpus. The State moved to dismiss the petition as untimely. Correia opposed the motion to dismiss. The district court summarily dismissed Correia's petition as untimely. This appeal followed.

Correia asserts that the district court abused its discretion by summarily denying his petition without granting an evidentiary hearing. We disagree.

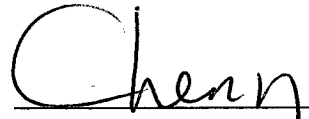
NRS 34.726(1) provides that, unless good cause is shown for the delay, a post-conviction petition that challenges the validity of the judgment or sentence must be filed within one year after entry of the judgment of conviction if no direct appeal is filed. "Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory." State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). To establish good cause, a petitioner must demonstrate that the delay was not his fault and dismissal of the petition as untimely will unduly prejudice him. NRS 34.726(1)(a),(b).

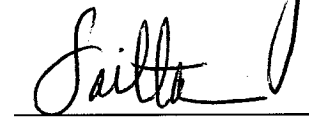
Correia filed his petition more than six years after entry of the judgment of conviction. He argued that good cause supported the delay in filing his petition because (1) his counsel did not inform him he had a right to a direct appeal or other post conviction relief; (2) as a youthful offender, he did not have adequate access to the law library when he was newly incarcerated; and (3) he was not around seasoned inmates with knowledge of his post conviction rights. Correia argued that dismissal of his petition as untimely would unduly prejudice him because his counsel was ineffective for (1) failing to investigate whether he had an insanity defense, (2) failing to negotiate a lesser sentence, (3) failing to object to the introduction of his prior juvenile record at sentencing, (4) failing to present mitigating evidence at sentencing, and (5) failing to advise him of his right to appeal. The district court found that Correia failed to plead sufficient facts showing good cause for the untimely filing of his petition and undue prejudice.

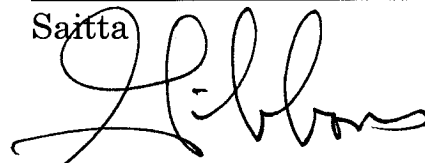
Correia failed to demonstrate that an impediment external to the defense prevented him from complying with the procedural default rules and failed to demonstrate that his claims of ineffective assistance of counsel were not reasonably available to him during the statutory time period for filing his petition. See Hathaway v. State, 119 Nev. 248, 252-53, 71 P.3d 503, 506-07 (2003). Therefore, we conclude that the district court did not abuse its discretion by finding that Correia failed to demonstrate good cause for the delay and resulting prejudice and by denying Correia's petition as untimely without the benefit an evidentiary hearing.

Having considered Correia's contention and concluded it lacks merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Mary Lou Wilson
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk