

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKIE LEE HILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52106

FILED

SEP 03 2009

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

ORDER OF REVERSAL AND REMAND

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On July 8, 2005, the district court convicted appellant, pursuant to a jury verdict, of two counts of sexual assault (felony), one count of first-degree kidnapping (felony), two counts of open or gross lewdness (gross misdemeanor), one count of indecent exposure (felony), and one count of bribing or intimidating a witness to influence testimony (felony). The district court adjudicated appellant a habitual criminal on the felony counts and sentenced appellant to serve a total of four consecutive terms of life in the Nevada State Prison with the possibility of parole. This court affirmed the judgment of conviction and sentence on appeal. Hill v. State, Docket No. 45712 (Order of Affirmance, February 13, 2007). The remittitur issued on March 13, 2007.

On March 19, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On March 28, 2008, and on May 16, 2008, appellant filed supplements to the petition. On April 3, 2008, appellant filed a motion to stay proceedings, arguing that he needed additional time to present claims for relief. On April 14, 2008, at a hearing on the motion, the district court denied the motion to stay. The district court stated the petition was three days late, but determined that the petition should be accepted as timely filed because it was only three days late. The district court then treated the motion for stay as a motion for extension of time and granted the motion.¹ 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 June 18, 2008, the district court denied appellant's petition. This appeal followed.

In his March 19, 2008 petition, appellant raised one claim—the district court committed plain error when it allowed the admission of the letter received by the victim's mother. In the first supplement to the petition, appellant raised the following claims: (1) the district court abused its discretion in failing to grant appellant's motion for mistrial or

¹It appears that the motion for extension related to the decision to allow the March 19, 2008 petition to be accepted as timely filed and did not relate to the filing of supplemental pleadings. Notably, the district court did not address supplemental documents or provide any deadline for a motion for extension.

take corrective action regarding a transcript of his interview with the police; (2) his trial counsel was ineffective for failing to sever the intimidation of a witness claim from the other claims; (3) his trial counsel was ineffective for failing to object to duplicative charges; (4) his double jeopardy rights were violated by duplicative counts of sexual assault and open or gross lewdness; (5) the district court erroneously denied his motion for psychiatric examination of the victim; (6) his appellate counsel was ineffective for failing to argue that insufficient evidence supported the intimidation count and the kidnapping count; (7) his appellate counsel was ineffective for failing to argue that his double jeopardy rights were violated by duplicative counts; and (8) his appellate counsel was ineffective for failing to argue the district court erroneously denied his motion for psychiatric examination of the victim. In his second supplemental pleading, appellant raised the following claims: (1) his trial counsel was ineffective for failing to object to the use of a 50,000 volt leg wrap; (2) his trial counsel was ineffective for failing to hire an investigator; (3) his trial counsel was ineffective for failing to personally contact and interview the victim; (4) his trial counsel was ineffective for failing to prepare appellant to take the stand; (5) his trial counsel was ineffective for informing the jury during opening statements that appellant would take the stand; (6) his trial counsel failed to call character witnesses during trial and sentencing; (7) his trial counsel failed to file a pretrial petition for a writ of habeas corpus; (8) the district court abused its discretion in adjudicating appellant a habitual criminal because of the nature of the prior felonies; (9) the district court erred in sentencing

appellant to a habitual criminal sentence for each count; (10) the sentences imposed were disproportionate to the crime; (11) the district court erred in requiring appellant to wear the electronic device on his leg; (12) the district court erred in allowing a nurse to testify; (13) the district court erred by presiding over the case after having previously recused himself from the matter; (14) the district court did not provide trial counsel with sufficient time for preparation; (15) the district court erred in allowing a "corrupt" detective to take the stand; (16) his trial counsel was ineffective for failing to move for a directed verdict; (17) allegations of prosecutorial misconduct; and (18) counsel failed to provide appellant with transcripts and documents.

A post-conviction petition for a writ of habeas corpus must be filed within one year after this court issues the remittitur from a timely direct appeal. NRS 34.726(1); Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133 (1998). Further, this court has determined that the prison mail box rule does not apply to a post-conviction petition for a writ of habeas corpus and the date that a petition is received and/or filed in the district court controls for purposes of NRS 34.726(1). Gonzales v. State, 118 Nev. 590, 595, 53 P.3d 901, 904 (2002) (rejecting the prison mail box rule and applying the procedural time bar to a petition filed one day late). Appellant filed his petition six days past the one-year deadline for filing a timely petition. Thus, appellant's petition was untimely filed. Appellant's petition was procedurally barred absent a demonstration of cause for the delay and a demonstration that appellant would be unduly prejudiced by dismissal of the petition as untimely filed. See id.

In an attempt to demonstrate cause for the delay, appellant argued that he did not discover that his direct appeal had been decided until December 2007 due to ineffective assistance of counsel.

We cannot affirm the order of the district court at this time. The district court reached the merits of some of the claims raised in the petition without addressing the procedural time bar. The order of the district court does not expressly recognize that the petition was filed late, sets forth the incorrect date for the issuance of the remittitur,² and provides no analysis of the good cause argument. The district court may not extend the time for filing a post-conviction petition for a writ of habeas corpus absent a demonstration of good cause. Good cause must be an impediment external to the defense. Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994). The fact that the petition was only three days late is not good cause. Further, even assuming that there had been a determination of good cause, the order prepared by the district attorney's office and signed by the district court did not address whether the district court permitted supplemental documents pursuant to NRS 34.750(5) and did not specifically list which documents the district court considered. The importance of these

²The district court's order states that the remittitur was issued on March 16, 2007. The remittitur was received by the clerk of the district court on March 16, 2007. However, the remittitur was issued by this court on March 13, 2007. NRS 34.726(1) measures the time for filing a timely petition from this court's issuance of the remittitur, not the district court's receipt of the remittitur. Gonzales, 118 Nev. at 593, 53 P.3d at 902.

supplemental documents in this case is profound as the supplemental documents raised numerous additional claims not specifically addressed in the order of the district court.³

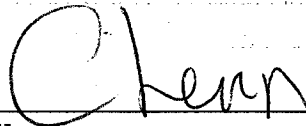
Accordingly, we reverse the order of the district court and remand this matter for the district court to consider the procedural time bar. The district court's final order resolving the petition should contain specific findings of fact and conclusions of law analyzing the procedural time bar, and if good cause is found, addressing whether the supplemental filings were permitted,⁴ and if so, specifically addressing the numerous claims raised in the supplemental filings. The district court may consider whether to appoint post-conviction counsel in this matter. See NRS 34.750(1).

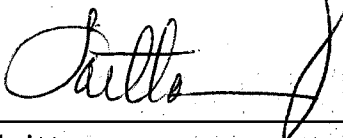
³The order of the district court sets forth four specific claims: (1) a claim barred by the doctrine of the law of the case regarding a letter received by the victim's mother; (2) a claim barred by the doctrine of the law of the case relating to a motion for a mistrial; (3) a claim that trial counsel was ineffective for failing to file a motion to sever; and (4) a claim that trial counsel was ineffective for failing to challenge the filing of five separate counts. These claims come from the original petition and the first supplement to the petition. No specific analysis is provided for claims 3 and 4. Rather, the order contains generic statements that trial and appellate counsel were not ineffective. Such generic statements lack the specificity contemplated by NRS 34.830(1) in the preparation of specific findings of fact and conclusions of law.

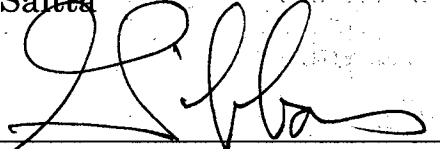
⁴It is within the district court's discretion to permit the original petition to be supplemented. NRS 34.750(5). Any final order should specifically set forth whether one or both supplements were permitted.

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.⁵


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Rickie Lee Hill
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁵This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.