

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED RAMAZ FULTCHER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34715 ✓

**FILED**

JUN 16 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

ALFRED RAMAZ FULTCHER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35422

ORDER DISMISSING APPEALS

These are proper person appeals from orders of the district court denying appellant's post-conviction petitions for writs of habeas corpus. We elect to consolidate these appeals for disposition. See NRAP 3(b).

On July 26, 1993, the district court convicted appellant, pursuant to a jury trial, of one count of robbery with the use of a deadly weapon and one count of battery by a prisoner. The district court sentenced appellant to serve terms totaling twenty-five years in the Nevada State Prison. This court dismissed appellant's direct appeal. *Fulcher v. State*, Docket No. 24912 (Order Dismissing Appeal, January 2, 1998). The remittitur issued on January 21, 1998.

On April 29, 1999, 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 23, 1999, the district court denied appellant's petition. Appellant's appeal is docketed in this court as Docket No. 34715.

On September 10, 1999, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in

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the district court. The State opposed the petition. Appellant filed a response. 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 December 8, 1999, the district court denied appellant's petition. Appellant's appeal is docketed in this court as Docket No. 35422.

Docket No. 34715

Appellant's April 29, 1999 petition was filed approximately fifteen months after the remittitur issued from appellant's direct appeal. Appellant's petition was untimely filed and therefore procedurally barred absent a demonstration of good cause. See NRS 34.726(1). Appellant argued that his delay in filing the petition should be excused because he was pursuing relief in the federal courts because of the delay in resolving his direct appeal. We conclude that the district court did not err in determining that appellant failed to demonstrate adequate cause to excuse the delay in filing his petition. See *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense); *Colley v. State*, 105 Nev. 235, 773 P.2d 1229 (1989) (stating that a prisoner's pursuit of federal habeas relief did not constitute good cause for his failure to file a post-conviction petition within the one-year time period required by statute).

Docket No. 35422


Appellant's September 10, 1999 petition was filed approximately twenty months after the remittitur issued from appellant's direct appeal. Thus, appellant's petition was untimely filed and therefore procedurally barred absent a demonstration of good cause. See NRS 34.726(1). Appellant's petition was also successive because he had previously filed a post-conviction petition for a writ of habeas corpus. See NRS 34.810(1)(b)(2); see also NRS 34.810(2). Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(1)(b); see also NRS 34.810(3). Appellant argued that his procedural defects


should be excused because he received ineffective assistance of counsel throughout the criminal proceedings and because he had limited assistance in drafting his petition. Appellant also argued that his petition was not successive because the prior petition had been denied on a procedural bar and not on the merits.<sup>1</sup> We conclude that the district court did not err in determining that appellant failed to demonstrate adequate cause to excuse his procedural defects. See *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense); *Phelps v. Director, Prisons*, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that appellant's limited intelligence or poor assistance in framing issues did not overcome the procedural bar).


Conclusion

Having reviewed the records 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. See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976). Accordingly, we

ORDER these appeals dismissed.

  
Maupin J.

  
Shearing J.

  
Becker J.

cc: Hon. Jeffrey D. Sobel, District Judge  
Attorney General  
Clark County District Attorney  
Alfred Ramaz Fultcher  
Clark County Clerk

<sup>1</sup>We note that NRS 34.810(1)(b)(2) provides that the district court shall dismiss a petition, absent a demonstration of good cause and prejudice, if the claims raised in the petition could have been raised on direct appeal or in a prior post-conviction petition for a writ of habeas corpus. The claims appellant raised in his petition would fall under this provision.