

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON NUNEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52273

FILED

ORDER OF AFFIRMANCE

MAY 07 2009
TRACIE L. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Jason Nunez's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On August 9, 2007, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary. The district court sentenced appellant to serve a term of 28 to 72 months in the Nevada State Prison, to be served consecutive to the sentence imposed in case C233474. Appellant did not file a direct appeal.

On October 22, 2007, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court denied the petition on January 16, 2008. No appeal was taken.

On May 5, 2008, appellant filed a second post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition and filed a motion to dismiss on the grounds that the petition was successive and an abuse of the writ. 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, 2008, the district court summarily denied appellant's petition, and on August 6, 2008, the district court entered specific findings of fact and conclusions of law denying the petition. This appeal followed.

Appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus on October 22, 2007. See NRS 34.810(2). Further, appellant's petition constituted an abuse of the writ to the extent his claims were new and different from those claims raised in his previous petition. See id. Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.810(3).

In an attempt to excuse his procedural defects, appellant argued that at the time he filed his first petition, he was in "lock up" status at High Desert State Prison, had not received his court files, and was unable to access the prison law library. Therefore, appellant argued that he was unable to ascertain the scope of factual and legal issues available. By the time appellant apparently gained access to a prison law clerk, and sought leave to amend his first petition, the district court had already denied the petition.

Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate good cause to excuse his procedural defects. 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,

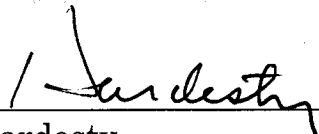
or that some interference by officials made compliance [with procedural rules] impracticable.” Id. (quoting Murray v. Carrier, 477 U.S. 478, 488 (1986) (internal citations omitted)). As established by the United States Supreme Court in Bounds v. Smith, this type of impediment may include a prison’s failure 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 a “reasonably adequate opportunity to file nonfrivolous legal claims challenging their convictions.” Lewis, 518 U.S. at 356.

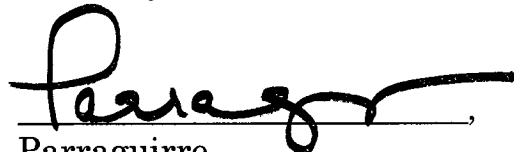
Pursuant to NRS 34.726, appellant had up to twelve months from the entry of the judgment of conviction to file a post-conviction petition. To facilitate the filing of this petition, appellant was entitled to “reasonably adequate” legal assistance through either access to a prison law library or assistance from a person trained in the law. Lewis, 518 U.S. at 356; Bounds, 430 U.S. at 828. However, neither Bounds nor Lewis require that a prisoner receive instant access to legal assistance. Here, it appears that the prison provided appellant with legal assistance within a time period sufficient to allow appellant reasonable time to file a timely post-conviction petition. It was appellant’s own choice to file his petition prior to gaining access to these resources. Therefore, we conclude that the district court did not err in denying appellant’s petition as successive.¹

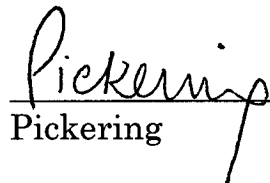
¹We have also reviewed appellant’s claim that the prison “paging system” violated his access to the prison library as provided in Bounds, and conclude that it lacks merit. Bounds grants prisons considerable
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Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Hardesty


_____, J.
Parraguirre


_____, J.
Pickering

cc: Eighth Judicial District Court Dept. 7, District Judge
Jason Nunez
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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leeway to facilitate inmate access to legal materials, and requires only that an inmate receive legal assistance through access to a prison law library or a person trained in law. 430 U.S. at 828. By his own admission, appellant received assistance from a prison law clerk in drafting his petition. Therefore, we conclude that the requirements of Bounds were satisfied.