

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM LEONARD STAYTON, IV,  
Appellant,  
vs.  
WARDEN WILLIAM DONAT,  
Respondent.

No. 52393

**FILED**

JUN 05 2009  
TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On July 28, 2004, the district court convicted appellant, pursuant to a guilty plea, of two counts of aiding and abetting in the commission of a burglary, one count of possession of stolen property, and one count of burglary. The district court sentenced appellant to serve consecutive terms totaling 91 to 420 months in the Nevada State Prison. The district court ordered appellant to pay restitution in the amount of \$9,378. No direct appeal was taken.

On March 17, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus and a request for the appointment of counsel in the district court. The district court appointed counsel to assist appellant, and post-conviction counsel filed a supplement to the petition. The State opposed the petition. On November 9, 2005, the district court denied appellant's petition. This court affirmed the order of the district court on appeal. Stayton v. State, Docket No. 46528 (Order of Affirmance, May 26, 2006).

On June 19, 2008, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. On August 14, 2008, without appointing counsel or conducting an evidentiary hearing, the district court denied the petition. This appeal followed.

In his petition, appellant claimed: (1) trial counsel was ineffective for failing to object to restitution; (2) trial counsel failed to present mitigating evidence at sentence and failed to argue for lesser sentences; and (3) his trial counsel was ineffective for failing to object to the burglary charge. Appellant also claimed that the Parole Board considered unreliable and false information in the presentence investigation report in denying parole.

Preliminarily, we note that the district court denied the fourth claim regarding the Parole Board because such a challenge must be made in the district court in which the petitioner is incarcerated. NRS 34.738(1). The district court did not err in so concluding, and we affirm the denial of this claim without prejudice to raise the claim in a petition filed in the proper court.

Regarding the first three claims challenging the validity of the judgment of conviction, appellant filed his petition almost four years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was an abuse of the writ because he raised new and different claims from those raised in the first habeas corpus petition. See NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS 34.810(3). Good cause must be an impediment external to the defense. Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994). All claims reasonably available to a petitioner must be

raised within a timely petition. Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

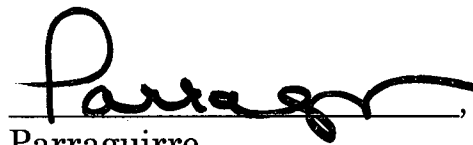
In an attempt to excuse his procedural defects, appellant argued that his illiteracy and deprivation of adequate access to legal resources excused his procedural defects. Appellant asserted that he was illiterate and had to rely on other inmates to research and prepare his post-conviction pleadings. Appellant claimed that the prison did not provide adequate direct access to the law library or to persons trained in the law. These claims did not provide good cause in the instant case. Appellant's illiteracy is not an impediment external to the defense and does not provide good cause to excuse his procedural defects. Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988). Appellant failed to demonstrate that the prison failed to provide adequate access to legal materials or inmate law clerks. Notably, appellant has filed two post-convictions petitions in proper person. More importantly, appellant was provided the assistance of counsel in the first post-conviction proceedings. Consequently, appellant failed to demonstrate that he was deprived of adequate access to legal resources and the courts through any act of official interference. Therefore, we conclude that the district court did not err in rejecting these good cause arguments.

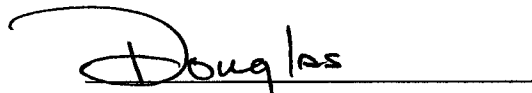
Next, appellant claimed that he had good cause because his attorney appointed in the first post-conviction proceedings failed to raise certain claims, and he was not permitted to raise those claims in proper person. This claim did not provide good cause in the instant case. Ineffective assistance of post-conviction counsel is not good cause in a non-capital case. See Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997); McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996). The fact that a

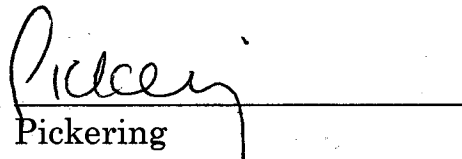
petitioner is not permitted to file documents in proper person while being represented in the lower court proceedings is not good cause as this does not rise to the level of an impediment external to the defense. Therefore, we conclude that the district court did not err in rejecting this good cause argument.

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.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Hon. Brent T. Adams, District Judge  
William Leonard Stayton IV  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk