

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW YOUNG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52505

FILED

FEB 19 2009

TRACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Andrew Young's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On August 4, 2006, the district court convicted appellant, pursuant to a jury verdict, of one count larceny from the person, and adjudicated appellant a habitual criminal pursuant to NRS 207.010(1)(a). The district court sentenced appellant to serve a term of five to twenty years in the Nevada State Prison. This court affirmed appellant's conviction on direct appeal. Young v. State, Docket No. 47936 (Order of Affirmance, June 27, 2007). The remittitur issued on July 24, 2007.

On May 19, 2008, appellant filed a motion for extension of time in which to file a post-conviction petition for a writ of habeas corpus. The district court denied the motion on June 20, 2008. On August 1, 2008, appellant filed a proper person post-conviction petition for a writ of habeas

corpus in the district court. 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 October 6, 2008, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately one year and one week after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed. See NRS 34.726(1); see also Gonzales v. State, 118 Nev. 590, 593-94, 53 P.3d 901, 902-903 (2002) (strictly construing the one-year deadline imposed in NRS 34.726(1) and concluding that a petition filed one year and two days after this court issued remittitur was untimely). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice. See id. at 595, 53 P.3d at 903.

Appellant made no attempt to demonstrate good cause for his delay in his petition. However, in his motion for extension of time, appellant argued that he was unable to file his petition in a timely manner because he did not have a law degree and was only allowed access to the prison law library for two one-hour sessions a week. He also noted that the library was occasionally closed during one of these sessions.

Even if this court were to consider the arguments made in appellant's motion for an extension of time, 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

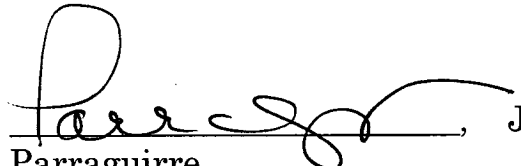
rules.” 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Impediments external to the defense include “a showing ‘that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials made compliance [with statutory time limits] impracticable.’” *Id.* (quoting *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 “reasonably adequate opportunity to file nonfrivolous legal claims challenging their convictions.” *Lewis*, 518 U.S. at 356. In addition, a petitioner’s limited intelligence or lack of education, on its own, is not sufficient to demonstrate good cause. See *Phelps v. Director*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988).

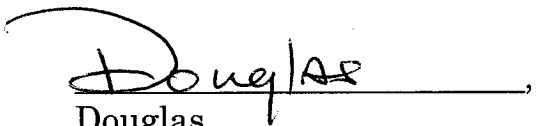
While the prison library may have been closed on some occasions, it appears that appellant was still allowed close to 100 hours to access the prison library and prepare his petition. We conclude that this allowed appellant ample opportunity to prepare his petition. Therefore, given that appellant’s lack of legal education is also insufficient to demonstrate good cause, we conclude that the district court did not error in denying the petition.

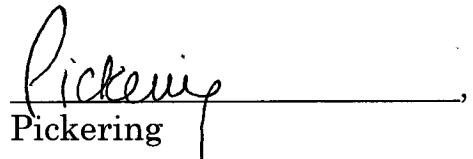
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

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. Michelle Leavitt, District Judge
Andrew Young
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk