

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRYSTAL FUENTES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53563

FILED

NOV 24 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

On June 22, 2005, the district court convicted appellant, pursuant to a jury verdict, of one count of first-degree kidnapping, one count of pandering of a child, and two counts of pandering, furnishing transportation. The district court sentenced appellant to serve a total of 9 to 25 years in the Nevada State Prison. This court affirmed the judgment of conviction on direct appeal. Fuentes v. State, Docket No. 45412 (Order of Affirmance, February 23, 2006). The remittitur issued on March 21, 2006.

On September 18, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. After conducting an evidentiary hearing, the district court denied the petition. This court affirmed the order of the district court on appeal. Fuentes v. State, Docket No. 49232 (Order of Affirmance, November 13, 2007).

On January 18, 2008, appellant filed a proper person motion to file a successive petition for a writ of habeas corpus. The State opposed the motion. On February 12, 2008, the district court denied the motion.

On November 4, 2008, 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 March 11, 2009, the district court denied appellant's petition. This appeal followed.¹

In her petition, appellant claimed that counsel was ineffective for failing to challenge certain jury instructions and failing to object to the State's argument and testimony at trial, the videotape of the interview with casino security should have been suppressed, prosecutorial misconduct, and insufficient evidence.

Appellant filed her petition more than two years after this court issued the remittitur from her direct appeal. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because she had previously filed a post-conviction petition for a writ of habeas corpus and an abuse of the writ because she raised new and different claims for relief. See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice. See NRS 34.726(1); NRS

¹We note that appellant filed a reply to the State's opposition. However, the reply was untimely filed and filed after the district court had orally denied the petition. We conclude that the district court did not abuse its discretion in failing to consider the reply under these circumstances. NRS 34.750(4), (5).

34.810(1)(b); NRS 34.810(3). Good cause must be an impediment external to the defense. Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).

Appellant first argued the petition was timely filed from the issuance of the remittitur in the post-conviction appeal. The issuance of the remittitur in the post-conviction appeal had no effect on the date to file a timely post-conviction petition for a writ of habeas corpus. NRS 34.726(1) (setting forth two triggers for a timely petition: entry of the judgment of conviction or issuance of the remittitur in a direct appeal). Further, this argument provided no explanation for why she should be allowed to file a second petition.

Next, appellant appeared to argue that she had good cause because transcripts were not available when she filed her first petition. The lack of transcripts is not good cause for the filing of a late, second petition. See Hood v. State, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995) (rejecting an argument that trial counsel's failure to provide a copy of the case file provided good cause). Moreover, appellant's first petition, raising over 16 claims for relief, was thoroughly litigated. Under these circumstances, we conclude that the district court did not err in rejecting this good cause argument.

Next, appellant appeared to argue that this court's decision discussing vicarious co-conspirator liability in Bolden v. State, 121 Nev. 908, 124 P.3d 191 (2005) provided good cause. Although new case law may in some cases provide good cause, this court's decision in Bolden would not provide good cause in the instant case. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Bolden was decided on December 15, 2005. Appellant filed her first petition on September 18, 2006.

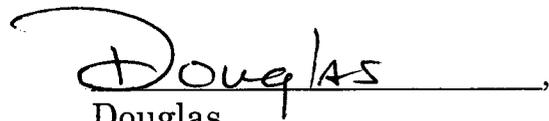
Appellant could have raised the Bolden claim in the first timely petition, and we conclude that the district court did not err in rejecting this good cause argument.

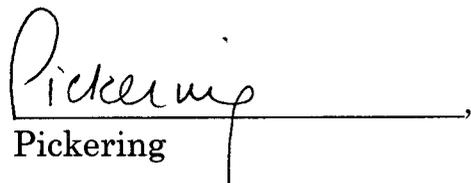
Finally, appellant claimed that ineffective assistance of trial and appellate counsel excused the procedural defects. An ineffective assistance of counsel claim may be good cause where it explains the delay; however, the ineffective assistance of counsel claim may not itself be procedurally barred. Id. Because appellant's claims of ineffective assistance of trial and appellate counsel were procedurally barred, they did not provide good cause in the instant case. Therefore, we affirm the order of the district court denying the petition as procedurally barred.

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.


Parraguirre, J.


Douglas, J.


Pickering, J.

cc: Hon. Stefany Miley, District Judge
Crystal Fuentes
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk