

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILMER GENE BENNETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53862

FILED

DEC 03 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Wilmer Gene Bennett's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

On November 30, 2007, the district court convicted Bennett, pursuant to a guilty plea, of one count of attempted lewdness with a child under the age of 14. The district court sentenced Bennett to serve a prison term of 24 to 120 months, imposed a special sentence of lifetime supervision, and ordered Bennett to register as a sex offender upon his release from custody. Bennett did not file a direct appeal.

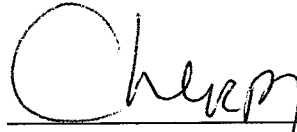
On February 25, 2009, Bennett filed an untimely post-conviction petition for a writ of habeas corpus in the district court. Thereafter, the State filed a response, the district court heard argument, and the district court entered findings of fact and conclusions of law and denied the petition. This appeal followed.

Bennett contends that the district court erred by failing to make specific findings as to whether (1) the delay was the petitioner's fault, (2) dismissal would unduly prejudice the petitioner, (3) the

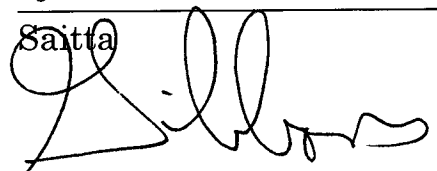
petitioner demonstrated prejudice, and (4) petitioner's good cause was not a substantial reason.

Although the district court order denying Bennett's habeas petition does not identify Bennett's good cause argument for his delay in filing the petition, it finds that the petition was filed late and that Bennett failed to show good cause for filing the petition late. Our review of the record on appeal reveals that Bennett failed to demonstrate that an impediment external to the defense prevented him from complying with procedural default rules, NRS 34.726(1)(a); Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003), and that he would be unduly prejudiced if his petition were dismissed, NRS 34.726(1)(b). Accordingly, we conclude that Bennett is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Ulrich W. Smith
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk