


IN THE SUPREME COURT OF THE STATE OF NEVADA

RODNEY EUGENE DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54021

FILED

SEP 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an 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; Kenneth C. Cory, Judge.

Appellant filed his petition on June 6, 2008, nearly four years after issuance of the remittitur on direct appeal on July 21, 2004. See Davis v. State, Docket No. 41430 (Order of Affirmance, June 25, 2004). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus, and it constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition.¹ See NRS 34.810(1)(b)(2); NRS 34.810(2). Appellant's petition was procedurally barred absent a

¹See Davis v. State, Docket No. 45071 (Order of Affirmance, October 4, 2005).

demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

First, appellant argues that the district court erred in denying his claim that he had good cause because the district court summarily denied appellant's first petition without holding an evidentiary hearing, appointing counsel, or allowing appellant to expand his claims.² Appellant waited over two years after this court issued its remittitur on the previous petition before filing the instant petition and appellant failed to demonstrate good cause for the entire length of the delay. We note that seeking relief in federal court is not good cause. See generally Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). Further, we note that appellant failed to demonstrate that he was entitled to an evidentiary hearing, the appointment of counsel, or to expand his petition. Therefore, this claim does not demonstrate a legal excuse sufficient to overcome the procedural bars. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

Second, appellant argues that the district court erred in denying his claim that he had good cause because he received ineffective assistance of appellate counsel. Appellant fails to demonstrate that ineffective assistance of appellate counsel provides good cause. Claims of

²According to the district court minutes from March 1, 2005, the district court held a hearing in order to orally announce its order denying appellant's petition for a writ of habeas corpus. It does not appear that the district court took evidence or heard argument at this hearing.

ineffective assistance of counsel cannot serve as cause for procedurally defaulted claims if the ineffective assistance of counsel claims themselves are procedurally defaulted. Id. at 252-53, 71 P.3d at 506; see also Edwards v. Carpenter, 529 U.S. 446, 452-53 (2000). Appellant's claims of ineffective assistance of appellate counsel were reasonably available during the statutory period for a timely petition. Therefore, appellant failed to demonstrate that the district court erred in denying the petition as procedurally barred.

Third, appellant argues that the district court erred in denying his claim that he had good cause because the district court failed to make a ruling regarding appellant's motion for sentencing transcripts filed before his first petition. Appellant fails to demonstrate good cause or prejudice. Appellant waited over two years after this court issued its remittitur on the previous petition before filing the instant petition and appellant failed to demonstrate good cause for the entire length of the delay.³ Further, appellant fails to demonstrate that he was entitled to the transcript at State expense as his motion for transcripts did not meet the requirements of Peterson v. Warden, 87 Nev. 134, 483 P.2d 204 (1971).

³Appellant also claimed that he could not raise this claim until he received the sentencing transcript which, according to his petition, he received on May 1, 2007. Appellant did not file his petition until June 6, 2008. Even assuming not receiving the sentencing transcript until May 1, 2007, provided good cause, appellant failed to demonstrate good cause for the entire length of the delay as he waited more than a year after receiving the transcript to file the instant petition. See Hathaway, 119 Nev. at 252-53, 71 P.3d at 506.

Therefore, appellant fails to demonstrate that the district court erred in denying the petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Kenneth C. Cory, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk