IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY LYNN DAVIS,
Appellant,
vs.
WARDEN, SOUTHERN DESERT CORRECTIONAL CENTER, BRIAN WILLIAMS AND THE STATE OF NEVADA,
Respondents.

No. 54948

FILED

SEP 10 2010

TRACIE K. 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 a post-conviction petition for a writ of habeas corpus.[1] Third Judicial District Court, Lyon County; David A. Huff, Judge.

Appellant filed his petition on October 9, 2007, more than one year after entry of the judgment of conviction on April 13, 2006. Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. See id.

Appellant claimed that he had good cause because he has new evidence that demonstrates that he is actually innocent. Specifically, he

[1]This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

claimed that he just discovered that the affidavit in support of the search warrant was sealed, and therefore, the search warrant was invalid. Appellant did not demonstrate actual innocence because he failed to show that "'it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence.'" Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996). Appellant failed to demonstrate that the search warrant was "new evidence" or that the search warrant was invalid. Therefore, we conclude that the district court did not err in denying this claim.

Appellant also claimed that he requested trial counsel to file an appeal but an appeal was not filed. Appellant failed to demonstrate why he could not have raised this claim in a timely petition. See Hathaway v. State, 119 Nev. 248, 253, 71 P.3d 503, 507 (2003) ("an appeal deprivation claim is not good cause if that claim was reasonably available to the petitioner during the statutory time period"). Appellant was sentenced in a different case on the same day and time as this case and was represented by the same counsel. Appellant filed a timely petition raising this exact claim in his other case, and therefore, this claim was reasonably available to petitioner during the statutory time period. See Davis v. State, Docket No. 52112 (Order of Affirmance, February 11,

2009). Thus, appellant failed to demonstrate good cause and the petition is properly procedurally barred.[2] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[3]

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. David A. Huff, District Judge
Jerry Lynn Davis
Attorney General/Carson City
Lyon County District Attorney
Lyon County Clerk

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[2]The district court erred in reaching the merits of his petition as appellant failed to demonstrate good cause and prejudice to overcome the procedural bars in NRS 34.726(1). Nevertheless, while a decision on the merits was erroneous, the denial of the petition was the correct result because the petition was procedurally barred. See Kraemer v. Kraemer, 79 Nev. 287, 291, 382 P.2d 394, 396 (1963) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

[3]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.