

IN THE SUPREME COURT OF THE STATE OF NEVADA

LISA M. GILL A/K/A LISA M.
STICKROD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55077

FILED

SEP 10 2010

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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant, with the aid of counsel, filed her petition on February 25, 2009,¹ three years after this court's February 7, 2006, issuance of the remittitur from her direct appeal. See Gill v. State, Docket No. 44182 (Order of Affirmance, January 11, 2006). Appellant's petition was therefore untimely filed and, absent a demonstration of good cause and prejudice, procedurally barred. See NRS 34.726(1). A petitioner has the burden of pleading and proving facts to demonstrate good cause to excuse the delay. State v. Haberstroh, 119 Nev. 173, 181, 69 P.3d 676, 681 (2003).

¹Contrary to the requirements of NRAP 30(c)(1), appellant did not provide this court with a file-stamped copy of her petition. However, the district court found that it was filed February 25, 2009, and appellant, who bears the burden of making the record on appeal, Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980), does not dispute that finding.

Appellant does not attempt to argue good cause on appeal.² Rather, she raises three challenges to the district court's order. We conclude that appellant is not entitled to relief.

First, appellant argues that the State never provided appellant with a proposed order to review. Even if this were true, we conclude any error was harmless and appellant failed to demonstrate prejudice. See NRS 178.598.

Second, appellant argues that the district court's order fails to provide specific findings of fact to support its procedural-bar conclusion. The record belies appellant's claim. The order stated the dates the remittitur was issued and the petition was filed, which were three years apart and thus supported a conclusion that the petition was procedurally barred. See NRS 34.726(1).

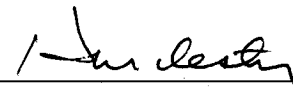
Finally, appellant argues that the procedural-bar issue had already been decided in appellant's favor at an earlier hearing. However, until it was reduced to a final order, the district court was not bound by its earlier statement that it would allow the petition to proceed on its merits.

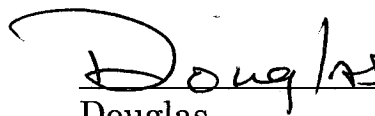
²We note that in her petition below, appellant acknowledged the delay and attributed it to delays in obtaining transcripts, court authority to hire investigators, and the appointment of post-conviction counsel. Even were these reasons impediments external to the defense, see Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003), they would still not provide good cause. First, the record reveals that trial transcripts were filed in November 2004 and all pre-petition transcripts were filed no later than 2007, such that this argument would not explain the entire delay. Second, the district court appointed post-conviction counsel and approved an investigator in June 2006, leaving appellant eight months in which to file a timely petition. However, appellant did not file her petition for nearly three years.


See Bradley v. State, 109 Nev. 1090, 1094-95, 864 P.2d 1272, 1275 (1993). Rather, unless it first found good cause and prejudice, the district court was required by NRS 34.726(1) to dismiss the petition as procedurally barred, regardless of any contrary agreement or stipulation among the parties. State v. Dist. Ct. (Riker), 121 Nev. 225, 234, 112 P.3d 1070, 1074, 1076 (2005); Haberstroh, 119 Nev. at 180, 69 P.3d at 681.

For the foregoing reasons, we conclude the district court did not err in denying appellant's petition as procedurally barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Valerie Adair, District Judge
Amesbury & Schutt
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³Because we affirm the district court's decision regarding the procedural bar, we decline to consider the merits of appellant's claim of ineffective assistance of counsel.