

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE T. LOVELL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34624

FILED

NOV 21 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: *[Signature]*
CHIEF DEPUTY CLERK

No. 34624

GEORGE T. LOVELL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court order dismissing appellant's post-conviction petition for a writ of habeas corpus.

On October 2, 1997, the district court convicted appellant, pursuant to a jury verdict, of one count each of burglary while in possession of a firearm, robbery with the use of a deadly weapon, possession of stolen property and possession of a firearm by an ex-felon. The district court sentenced appellant to multiple consecutive prison terms.

On March 25, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to represent appellant, conducted an evidentiary hearing to determine whether appellant could demonstrate good cause for the delay in filing his

petition, and dismissed the petition as untimely. This appeal followed.

Appellant's petition was filed over seventeen months after entry of the judgment of conviction. Thus, appellant's petition was untimely. See NRS 34.726(1) (providing that a petition for writ of habeas corpus must be filed within one year after entry of judgment of conviction, if no direct appeal was taken). Appellant's petition was procedurally barred absent a demonstration of good cause for the delay. See id.

Appellant argues that the district court erred in determining he failed to demonstrate good cause to excuse the untimely filing of his petition. Specifically, he argues his delay should be excused because he never received notice of entry of the judgment of conviction and because his counsel led appellant to believe that he would pursue a direct appeal on appellant's behalf. We conclude that the district court did not err.

First, we conclude that there is no Nevada statute or rule requiring notice of entry of a judgment of conviction in a criminal case. Appellant's references to the Nevada Rules of Civil Procedure and cases interpreting those rules are inapposite. Similarly, the statutes and court rules addressing notice of entry of an order denying a post-conviction petition also do not stand for the proposition that the time for filing a post-conviction petition depend in any way on notice of entry of the judgment of conviction. Moreover, NRS 34.726(1) provides that where a defendant does not pursue a direct appeal, a post-conviction petition must be filed within one year after entry of the judgment of conviction. The statute does not mention a notice of entry of the judgment of conviction. We decline to

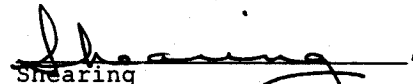
require a notice that is not provided for by statute or rule. We therefore conclude that this allegation does not constitute good cause to excuse appellant's delay in filing his petition.

Next, we conclude that the alleged deficiencies of appellant's prior counsel also do not constitute good cause. The district court conducted an evidentiary hearing on this claim of good cause. Although there was some indication from counsel's testimony that appellant believed counsel was pursuing a direct appeal following the conviction, appellant was put on notice in June 1998 that no such appeal had been filed and learned from his counsel no later than September 1998 that counsel had not filed an appeal. Also in September 1998, counsel provided appellant with a post-conviction petition and advised appellant that the petition had to be filed no later than October 2, 1998. Although appellant filed several proper person motions on September 28, 1998, he did not file a post-conviction petition until March 25, 1999. The district court found that appellant was aware prior to the one-year deadline that no appeal had been filed and that the deadline for filing a post-conviction proceeding was fast approaching. On this basis, the district court found that appellant had failed to demonstrate good cause for his delay. We agree that under the circumstances in this case, the misunderstanding as to whether counsel had filed an appeal does not constitute good cause for appellant's delay. See *Lozada v. State*, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense); cf. *Loveland v. Hatcher*, No. 99-17348, 2000 WL 1644302, at 4 (9th Cir. Nov. 3, 2000) (holding that petitioner's reliance on counsel to file direct appeal is sufficient cause to excuse procedural default in failing to file

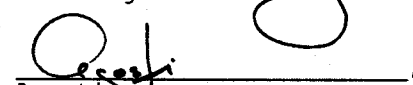
timely post-conviction habeas petition, provided that petitioner establishes "(1) he actually believed his counsel was pursuing his direct appeal, (2) his belief was objectively reasonable, and (3) he filed his state post-conviction relief petition within a reasonable time after he should have known that his counsel was not pursuing his direct appeal").

Therefore, we conclude that the district court did not err in dismissing appellant's petition as untimely. See Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989) (holding that "[a]ppellate courts will not disturb a trial court's discretion in determining the existence of good cause except for clear cases of abuse"). Accordingly, we affirm the district court's order dismissing appellant's post-conviction petition for a writ of habeas corpus.


It is so ORDERED.¹



Shearing J.



Agosti J.



Leavitt J.

cc: Hon. Michael L. Douglas, District Judge
Attorney General
Clark County District Attorney
Kelly & Sullivan, Ltd.
Clark County Clerk

¹We have considered all proper person documents filed or received in these matters, and we conclude that the relief requested is not warranted.