

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKIE LEE HILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58154

FILED

JAN 16 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

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; Abbi Silver, Judge.

Appellant filed his petition on March 19, 2008, more than one year after issuance of the remittitur on direct appeal on March 13, 2007. Hill v. State, Docket No 45712 (Order of Affirmance, February 13, 2007). Thus, appellant's petition was untimely filed and procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See NRS 34.726(1). Cause must be an impediment external to the defense and must afford a legal excuse. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, appellant argues that he has good cause to excuse the delay because he did not learn that his direct appeal had been denied until December of 2007, approximately three months before the timely filing date for a post-conviction petition of March 13, 2008, and argues that the district court should have conducted an evidentiary hearing to allow appellant to develop facts as to how this prevented him from complying with the procedural time bar.

We cannot affirm the decision of the district court to deny appellant's petition as procedurally barred without conducting an evidentiary hearing on appellant's good cause claim. The record is unclear when appellate counsel informed his client of the resolution of the direct appeal or whether appellant reasonably could have learned of the denial at an earlier time. This information is critical to ascertain whether a petitioner could have reasonably met the stringent deadline imposed by NRS 34.726 and a petitioner is not likely to pursue post-conviction relief while he believes his direct appeal is pending. See Hathaway, 119 Nev. at 254, 71 P.3d at 507. As the record is unclear when appellant learned or should have learned of the resolution of his direct appeal, an evidentiary hearing is necessary to determine whether appellant actually believed his direct appeal was still pending in December of 2007 and whether that belief was objectively reasonable.¹ Therefore, we reverse the district's

¹The district court stated in its order that a delay of more than 70 days from when appellant claimed he learned of the denial of his direct appeal until he filed the petition was unreasonable. We note the legislature's decision that a reasonable amount of time to prepare and file a post-conviction petition is one year after the issuance of the remittitur
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decision to deny this good cause claim without conducting an evidentiary hearing.


Second, appellant argues that he delivered the petition to prison officials on March 10, 2008, that there was an unreasonable delay from that date until the district court filing date of March 19, 2008, and that this court should reconsider its decision in Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002), concluding that the prison mailbox rule is not applicable to a post-conviction petition for a writ of habeas corpus. As stated in Gonzales, a post-conviction petition for a writ of habeas corpus “must be filed with the appropriate district court within the applicable time period set forth in NRS 34.726(1),” not merely delivered to prison officials prior to the timely filing date, and we decline appellant’s invitation to reconsider the decision that the prison mailbox rule does not extend to the filing of post-conviction habeas petitions. Id. at 595, 53 P.3d at 904. Appellant provides no facts which would show that prison officials interfered with his ability to file a timely petition and therefore, fails to show that official interference should excuse the untimely filing of his petition. See id. (citing Harris v. Warden, 114 Nev. 956, 959 & 960 n.4, 964 P.2d 785, 787 & n.4 (1998)); see also Hargrove, 100 Nev. at 502-03, 686 P.2d at 225 (stating that bare or naked claims which are unsupported by any specific factual allegations are insufficient to entitle a petitioner to


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from the denial of a direct appeal. See NRS 34.726(1); Hathaway, 119 Nev. at 254-55, 71 P.3d at 507-08.

an evidentiary hearing). Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.² Accordingly, we

ORDER the judgment of the district court **AFFIRMED IN PART AND REVERSED IN PART AND REMAND** this matter to the district court for proceedings consistent with this order.³


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Abbi Silver, District Judge
Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We decline appellant's invitation to adopt the equitable tolling standard as used in federal courts for untimely habeas petitions.

³This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.