

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL J. ZELLIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59874

FILED

OCT 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Appellant filed his petition on June 14, 2011,² over one year after the issuance of the remittitur on direct appeal on June 7, 2010. Zellis v. State, Docket No. 53950 (Order of Affirmance, April 7, 2010). Thus, appellant's petition was untimely filed. See NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. See id. Good cause can be demonstrated by a showing that an impediment external to the defense prevented the timely filing of the petition. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).

¹This 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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²The petition was stamped "received" on June 10, 2011. The receipt and filing dates are both outside the one-year time period.

Appellant claimed that his petition should be deemed timely because he submitted his petition to prison officials on June 3, 2011, four days before the one-year deadline. However, the prison mailbox rule, which allows the date of delivery to prison officials to count in determining the timeliness of a notice of appeal, does not apply to post-conviction petitions for relief. Gonzales v. State, 118 Nev. 590, 595, 53 P.3d 901, 904 (2002). Thus, even if appellant gave his petition to prison officials before the deadline, the petition was not filed for purposes of NRS 34.726 until it was actually received by the district court. Accordingly, his petition was untimely, and the district court did not err in rejecting this claim.

In an attempt to demonstrate good cause, appellant set forth several reasons for the untimely filing of his petition. First, he claimed that he was indigent and could not afford counsel, and thus should not be held to the strict standard under NRS 34.726(1). Appellant's proper person status does not excuse him from complying with procedural rules, nor does his lack of legal knowledge constitute good cause. See State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) ("Application of the statutory procedural default rules to post-conviction habeas petitions is mandatory."); Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that a petitioner's limited intelligence and poor legal assistance from inmate law clerks did not establish good cause). Thus, the district court did not err in rejecting this claim.

Next, appellant claimed that he had good cause to excuse the procedural defect because prison customs and policies constituted official interference. He asserted that he was hindered in his ability to timely prepare and file his petition because he was temporarily placed in involuntary protective segregation, his movement in the prison was restricted, and he did not have adequate access to the law library due to

the strict prison policies and occasional lock-downs. Appellant failed to demonstrate that official interference affected his ability to file a timely petition. See Hathaway, 119 Nev. at 252, 71 P.3d at 506. Other than alleging that he did not have access to his legal materials for ten days, he did not explain how his placement in segregation hindered his ability to file a timely petition. Appellant further failed to explain when he received access to legal resources and how additional access to the law library was necessary to file a timely petition. Notably, appellant was able to file an 88-page motion for a new trial—in which he raised several of the same claims as in his petition—in December 2010, more than five months before the one-year deadline. Moreover, while he identified several instances in which he did not have access to the law library, he failed to demonstrate good cause for the entire length of his delay. Appellant had a year to file a post-conviction petition for a writ of habeas corpus, but chose to wait until the end of that time period to do so, resulting in an untimely petition. Thus, appellant failed to demonstrate that an impediment external to the defense excused his procedural defects, and the district court did not err in denying his claim of official interference.

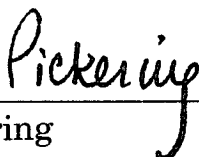
Finally, appellant claimed that the procedural bar should be excused because he is actually innocent and a failure to review his substantive claims would result in a fundamental miscarriage of justice. To demonstrate actual innocence, appellant must show that “it is more likely than not that no reasonable 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). In this context, actual innocence means “factual innocence, not mere legal insufficiency.” Mitchell v. State, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006) (quoting Bousley v. United

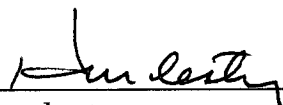
States, 523 U.S. 614, 623-24 (1998)). Appellant failed to identify any new evidence showing his innocence. Rather, he relied on many of the substantive claims from his petition, arguing primarily that the evidence used to convict him was unreliable and the jury instructions were erroneous. Because appellant failed to show that he is actually innocent, the district court's denial of the petition did not result in a fundamental miscarriage of justice.

For the reasons discussed above, we conclude that the district court did not err in denying the petition as time-barred. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Kathleen E. Delaney, District Judge
Michael Joseph Zellis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³In light of this order, appellant's pending motions are moot. 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.