

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUFINO E. PATACSIL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60018

FILED

JAN 16 2013

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Sixth Judicial District Court, Pershing County; Michael Montero, Judge.

Appellant Rufino Patascil pleaded guilty to one count of sexual assault on November 14, 2005. A direct appeal was never filed and a post-conviction petition for a writ of habeas corpus was not filed until October 9, 2007. In that petition, Patascil argued that he mistakenly believed that counsel had filed a direct appeal and that his erroneous belief constituted good cause to avoid the mandatory one-year time limit to file his post-conviction petition. NRS 34.726(1). The district court agreed and granted leave to file a late petition, subsequently denying the petition on its merits. On appeal, this court reversed because the district court failed to conduct an evidentiary hearing regarding the procedural bars and remanded to the district court to conduct such a hearing, and if it were to

find good cause, to allow Patascil to file a late direct appeal.¹ After conducting the hearing, the district court concluded that Patascil failed to demonstrate good cause for the delay and denied his petition as untimely.

On appeal, Patascil argues that the district court erred in denying his petition on the grounds that it was untimely because his mistaken belief that an appeal had been filed on his behalf constituted good cause for the delay. We disagree. Evidence adduced at the evidentiary hearing demonstrated that Patascil's belief that counsel had filed an appeal was based entirely upon a letter that he sent to counsel on November 27, 2005, in which he inquired as to which grounds would be raised in an appeal. Patascil was never contacted by counsel to discuss an appeal nor was the letter responded to in any way. Patascil made no other attempts to contact counsel and did not inquire further into the matter until shortly before June 4, 2007, when he learned that an appeal had never been filed. Based on the evidence presented at the evidentiary hearing, Patascil did not have a reasonable belief that counsel had filed an appeal and therefore he did not establish good cause for the delay in filing his post-conviction petition. Hathaway v. State, 119 Nev. 248, 255, 71 P.3d 503, 508 (2003) (providing that a petitioner can establish good cause for the delay if the petitioner establishes that the petitioner reasonably believed that counsel had filed an appeal and that the petitioner filed a

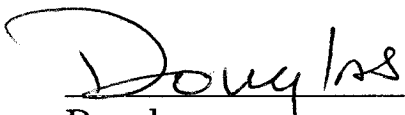
¹Patascil v. State, Docket No. 51444 (Order of Reversal and Remand, November 6, 2008).

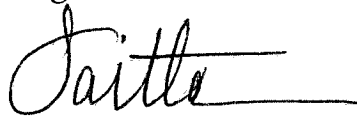
habeas corpus petition within a reasonable time after learning that a direct appeal had not been filed). Accordingly, we conclude that the district court did not err in dismissing the petition on the grounds that it was untimely.

Having considered Patascil's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Michael Montero, District Judge
Karla K. Butko
Attorney General/Carson City
Pershing County District Attorney
Pershing County Clerk