

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM THOMPSON,

No. 35527

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUN 14 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

On July 1, 1997, the district court convicted appellant, pursuant to a jury verdict, of burglary. The district court adjudicated appellant an habitual criminal and sentenced appellant to serve a maximum term of 240 months, with a minimum parole eligibility of 96 months, to run consecutively to a sentence in another case, in the Nevada State Prison. This court dismissed appellant's appeal from his conviction and sentence.¹ The remittitur issued on September 29, 1998.

On October 4, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant

¹See Thompson v. State, Docket No. 30838 (Order Dismissing Appeal, September 10, 1998).

01-09956

filed a response. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On December 21, 1999, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than one year after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally bared absent a demonstration of cause for the delay and prejudice.³

In an attempt to demonstrate cause for the delay, appellant argued that he delivered his petition to the supervisor of the prison law library for mailing on September 29, 1999, the last day the petition could have been timely filed. Appellant argued that Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992), should be applied in determining the timeliness of his habeas corpus petition.⁴ Even assuming, without deciding, that Kellogg may be extended to habeas corpus petitions, appellant failed to provide compelling or legible proof, such as an entry in the prison's official mail log, to indicate he delivered the

²See NRS 34.726(1).

³See id.

⁴Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992) (holding that date for delivery of notice of appeal to prison official may be proven by entry in official prison mail log provided for use of prisoners).

petition for mailing on September 29, 1999.⁵ Further, appellant has not made any other attempt to demonstrate good cause for filing the petition late. Based on our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition as procedurally barred.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Maupin, C.J.
Maupin

Young, J.
Young

Leavitt, J.
Leavitt

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
William Thompson
Clark County Clerk

⁵Appellant attempts to prove his filing date by a receipt for purchase of postage, which we conclude is an insufficient indicator of the date his petition was actually delivered to a prison official.

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).