

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNATHAN LUCKEY, A/K/A
JONATHAN LUCKEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60656

FILED

FEB 13 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 appellant Johnathan Luckey's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Luckey contends that the district court erred by concluding that he failed to demonstrate good cause for the untimely filing of his habeas petition. Luckey also claims that he was prejudiced by counsel's improper advisement regarding the consequences of his guilty plea. We conclude that Luckey is not entitled to relief.

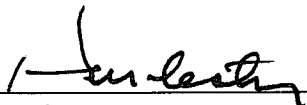
The district court conducted a hearing and found that Luckey mailed his habeas petition on April 22, 2010, approximately two weeks prior to the deadline, but that it was not filed in the district court until May 11, 2010, four days late. See NRS 34.726(1) ("[A] petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction.").¹ The district court

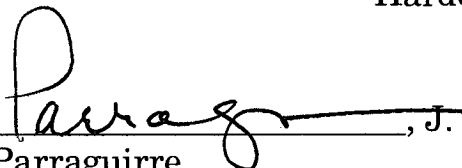
¹Luckey's judgment of conviction was filed in the district court on May 7, 2009. Luckey filed an untimely direct appeal which was dismissed by this court. See Luckey v. State, Docket No. 54384 (Order Dismissing Appeal, September 24, 2009).

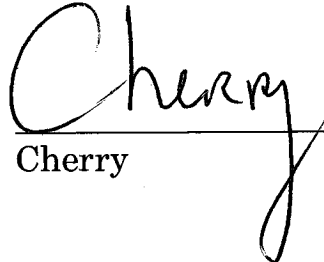
concluded that although Luckey's petition was timely-mailed, he nevertheless failed to demonstrate that its untimely filing was the result of official interference. See Gonzales v. State, 118 Nev. 590, 595, 53 P.3d 901, 904 (2002). As a result, the district court determined that Luckey failed to demonstrate good cause sufficient to overcome the procedural bar and denied his petition. See NRS 34.726(1)(a). The district court did not address Luckey's allegation of prejudice. See NRS 34.726(1)(b).

We conclude the district court erred by finding that Luckey failed to demonstrate good cause because an impediment external to the defense prevented his petition from being timely-filed. See Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). We also conclude, however, that Luckey failed to demonstrate prejudice because his claim that he was improperly advised about the consequences of his guilty plea is belied by the record. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Kirksey v State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Therefore, Luckey is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Cherry

cc: Hon. Linda Marie Bell, District Judge
Kristina M. Wildeveld
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk