

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARNIE MARIE PEOT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 35632

FILED

SEP 12 2002

ORDER OF AFFIRMANCE

WALTER A. LECHE
CLERK OF THE SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

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 September 1, 1995, the district court convicted appellant, after a jury trial, of two counts of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve four consecutive terms of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's appeal from her judgment of conviction.¹ The remittitur issued on August 5, 1997.

On November 23, 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 filed a supplement to the petition. 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 March 6, 2000, the district court denied appellant's petition. This appeal followed.

Appellant filed her petition more than two years after this court issued the remittitur from her direct appeal. Thus, appellant's

¹Peot v. State, Docket No. 27651 (Order Dismissing Appeal, July 15, 1997).

petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³

In an attempt to demonstrate cause for the delay, appellant argued that she was refused access to law clerks, the law library, and legal materials. She further claimed that she recently discovered facts and evidence demonstrating her innocence. Finally, she claimed that she had asked appellate counsel to raise certain issues on direct appeal but that he had failed to do so.

Based upon our review of the record on appeal, we conclude that the district court did not abuse its discretion in determining that appellant failed to demonstrate adequate cause to excuse her delay.⁴ Appellant failed to provide specific facts relating to her alleged deprivation of access to law clerks, the law library, and legal materials. Appellant failed to indicate how this alleged deprivation prevented her from filing a timely habeas corpus petition. Appellant failed to demonstrate that the claims that she raised in the petition could not have been raised or discovered earlier in the proceedings.⁵ Finally, appellant did not

²See NRS 34.726(1).

³See id.

⁴Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense); Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989) (holding, in general, that a lower court's determination regarding the existence of good cause will not be disturbed absent a clear case of abuse of discretion).


⁵See Edwards v. Carpenter, 529 U.S. 446 (2000) (holding that a procedurally defaulted ineffective assistance of counsel claim can serve as cause to excuse the procedural default of another habeas corpus claim only if the habeas petitioner can satisfy the "cause and prejudice" standard with respect to the ineffective-assistance claim itself); Murray v. Carrier, 477 U. S. 478, 488 (1986) (explaining that an objective factor external to the defense sufficient to overcome a procedural default may be a showing

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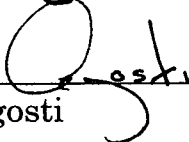
demonstrate that failure to consider her petition would result in a fundamental miscarriage of justice.⁶

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

cc: Hon. John S. McGroarty, District Judge
Attorney General/Carson City
Clark County District Attorney
Marnie Marie Peot
Clark County Clerk

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that the factual or legal basis for a claim was not reasonably available to counsel).

⁶Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996) (stating that a petitioner may be entitled to review of defaulted claims if failure to review the claims would result in a fundamental miscarriage of justice); see also Schlup v. Delo, 513 U.S. 298, 327 (1995) (holding that when a claim of innocence is accompanied by an assertion of constitutional error at trial the petitioner must demonstrate that it is more likely than not that no reasonable juror would have found her guilty beyond a reasonable doubt in light of the new evidence).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).