

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUFFY J. JACOBSON,

No. 35783

Appellant,

vs.

WARDEN, NEVADA STATE PRISON, E.K.  
MCDANIEL,

Respondent.

**FILED**

**JUL 12 2001**

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

ORDER OF AFFIRMANCE

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

On March 12, 1997, the district court convicted appellant, pursuant to a guilty plea, of first degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison without the possibility of parole. Appellant did not file a direct appeal.

On October 27, 1998, appellant filed a proper person motion to correct an illegal sentence in the district court challenging the deadly weapon enhancement. The State opposed the motion. Appellant filed a reply. On January 12, 1999, the district court denied appellant's motion. Appellant did not file an appeal.

On July 30, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State moved to dismiss the petition on the ground that the petition was procedurally time barred. The district court appointed counsel to represent appellant,

and counsel filed an opposition to the motion to dismiss. On February 16, 2000, after conducting an evidentiary hearing on appellant's argument of good cause, the district court dismissed appellant's petition as procedurally time barred. This appeal followed.

Appellant filed his petition more than two years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.<sup>1</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>2</sup> Generally, a lower court's determination regarding the existence of good cause will not be disturbed absent a clear case of abuse of discretion.<sup>3</sup>

In an attempt to demonstrate cause for the delay, appellant testified that he had not been informed by his counsel of his right to a direct appeal or his right to pursue post-conviction relief. Appellant further testified that he had been in lockdown for approximately seven months due to problems he had with a cellmate and that he did not have access to the law library or legal resources during this time. Although appellant acknowledged learning about the right to pursue post-conviction relief in March of 1998, appellant testified that his petition was delayed further because he did not possess adequate legal knowledge and because inmate law clerks lacked sufficient legal knowledge. Finally, in his

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<sup>1</sup>See NRS 34.726(1).

<sup>2</sup>See id.

<sup>3</sup>See Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989).

petition, appellant argued that he had difficulties in getting his files from his trial counsel.

This court has held that good cause must be an impediment external to the defense.<sup>4</sup> Appellant's claim that he was deprived of the right to a direct appeal was insufficient to excuse his procedural defect.<sup>5</sup> Moreover, appellant's allegation that he was not informed of the right to a direct appeal or the right to pursue post-conviction relief was found to lack merit. Appellant's trial counsel, Kenneth Ward, testified that he informed appellant of the limited right to a direct appeal and of the right to pursue post-conviction relief. The time appellant spent in lockdown due to his problems with a cellmate did not constitute an impediment external to the defense.<sup>6</sup> Appellant's lack of legal knowledge or poor assistance from inmate law clerks did not excuse the procedural time bar.<sup>7</sup> Finally, the difficulties appellant had in retrieving his files from his trial counsel did not constitute good cause to excuse the procedural default.<sup>8</sup> Thus, 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 for the delay.

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<sup>4</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>5</sup>See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

<sup>6</sup>See Lozada, 110 Nev. 349, 871 P.2d 944.

<sup>7</sup>See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

<sup>8</sup>See Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).

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.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

Young J.  
Young

Leavitt J.  
Leavitt

Becker J.  
Becker

cc: Hon. Archie E. Blake, District Judge  
Attorney General  
Lyon County District Attorney  
Duffy J. Jacobson  
Lyon County Clerk

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<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

<sup>10</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.