

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC DEWAYNE ROGERS,  
Appellant,

vs.

THE STATE OF NEVADA,  
Respondent.

No. 35059

**FILED**

**AUG 07 2001**

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

No. 35954

ERIC DEWAYNE ROGERS,  
Appellant,

vs.

THE STATE OF NEVADA,  
Respondent.

ORDER OF AFFIRMANCE

These are proper person appeals from district court orders dismissing appellant's post-conviction petitions for writs of habeas corpus. We elect to consolidate these appeals for disposition.<sup>1</sup>

On February 28, 1995, the district court convicted appellant, pursuant to a guilty plea, of two counts of statutory sexual seduction in district court case number CR94-1169 and two counts of second degree kidnapping with use of a deadly weapon in district court case number CR95-0357. The district court sentenced appellant to serve terms totaling 32

<sup>1</sup>See NRAP 3(b).

years in the Nevada State Prison.<sup>2</sup> On April 16, 1996, appellant filed a proper person notice of appeal from his judgment of conviction and sentence in district court case number CR94-1169. This court dismissed appellant's untimely direct appeal for lack of jurisdiction.<sup>3</sup> The remittitur issued July 3, 1996.

On July 10, 1995, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant filed the petition in two district court cases, CR94P1169 and CR95P0357. 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 October 13, 1995, the district court entered an order dismissing the petition in both cases. This court dismissed appellant's appeal.<sup>4</sup>

On August 23, 1999, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. Again, appellant filed the petition in two district court cases, CR94P1169 and CR95P0357. The State opposed the petition in district court case CR94P1169, arguing that it was procedurally barred because it was untimely and

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<sup>2</sup>Appellant was sentenced in cases CR94-1169 and CR95-0357, on February 28, 1995.

<sup>3</sup>Rogers v. State, Docket No. 28384 (Order Dismissing Appeal, June 14, 1996).

<sup>4</sup>Rogers v. State, Docket No. 27758 (Order Dismissing Appeal, December 18, 1995).

successive.<sup>5</sup> 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 October 4, 1999, the district court entered an order dismissing the petition in case number CR94P1169 as procedurally barred.<sup>6</sup> Appellant filed a timely notice of appeal, which was docketed in this court as docket number 35059.

On March 20, 2000, appellant filed proper person documents labeled "Motion Requesting Court to Grant Relief on Petition for Writ of Habeas Corpus" and a request for submission in the district court under case number CR95P0357. On March 29, 2000, in case number CR95P0357, the district court entered an order dismissing appellant's untimely and successive August 23, 1999 petition for a writ of habeas corpus, and denying appellant's March 20, 2000 "Motion Requesting Court to Grant Relief on Petition for Writ of Habeas Corpus." Appellant filed a timely notice of appeal, which was docketed in this court as docket number 35954.

Appellant filed his petition in both district court cases almost five years after entry of the judgment of conviction. Thus, appellant's petitions were untimely filed.<sup>7</sup> Moreover, appellant's petitions were successive because he had previously filed a post-conviction petition for a writ of

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<sup>5</sup>See NRS 34.726(1); NRS 34.810(2).

<sup>6</sup>See id.

<sup>7</sup>See NRS 34.726(1).

habeas corpus in both cases.<sup>8</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>9</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>10</sup>

In an attempt to demonstrate good cause for the delay, appellant argued that his attorney failed to inform him of his right to a direct appeal and other post-conviction remedies. Appellant also argued that his delay should be excused because of the disruptive environment in prison. Finally, appellant argued that his appeal was untimely because he was uneducated in the law and received erroneous information from inmate law clerks. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate adequate cause to excuse his delay.<sup>11</sup> Accordingly,

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<sup>8</sup>See NRS 34.810(2).

<sup>9</sup>See NRS 34.726(1); NRS 34.810(3).

<sup>10</sup>See Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989).

<sup>11</sup>See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998) (holding "an allegation that trial counsel was ineffective in failing to inform a claimant of the right to appeal from the judgment of conviction, or any other allegation that a claimant was deprived of a direct appeal without his or her consent, does not constitute good cause to excuse the untimely filing of a petition pursuant to NRS 34.726"); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (explaining that good cause must be an impediment external to the defense); Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999) (holding that counsel has no absolute duty to inform of the right to appeal from a guilty plea absent extraordinary circumstances); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that limited intelligence and reliance on an inmate law clerk unschooled in the law do not establish good cause).

we conclude that the district court did not err in dismissing the petition filed in both district court cases.

Having reviewed the records 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>12</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young J.  
Young

Leavitt J.  
Leavitt

Becker J.  
Becker

cc: Hon. Janet J. Berry, District Judge  
Attorney General  
Washoe County District Attorney  
Eric Dewayne Rogers  
Washoe County Clerk

<sup>12</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).