

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRYL G. STOREY,

No. 36141

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

DEC 06 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 Darryl Storey's post-conviction petition for a writ of habeas corpus.

On February 22, 1996, the district court convicted appellant, pursuant to an Alford¹ plea, of second-degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison. Appellant did not file a direct appeal.

On January 29, 1997, Storey filed a "Notice of Intent to File" in the district court. In this notice, Storey explained that he was having difficulty in obtaining his case-file from his trial counsel and accessing the prison's law library but that he intended to file a claim for post-conviction relief. On the same day, Storey filed a "Motion for Enlargement of Time," requesting that the district court extend the filing deadline for his post-conviction petition for a writ of habeas corpus by ninety days. Although the district court orally denied this motion on February 10, 1997, it does not appear that the district court issued a written order.

On July 10, 1997, Storey filed his first proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed counsel, but did not conduct an evidentiary hearing. On October 9, 1997, the district court

¹North Carolina v. Alford, 400 U.S. 25 (1970).

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denied Storey's petition. This court dismissed Storey's appeal because it was time-barred.²

On January 14, 2000, Storey filed the instant post-conviction petition for a writ of habeas corpus. The State opposed the motion. Storey filed a response. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent Storey or to conduct an evidentiary hearing. On April 27, 2000, the district court denied the petition.

Storey filed his petition approximately three years after entry of the judgment of conviction. Thus, his petition was untimely filed.³ Moreover, Storey's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.⁴ Storey's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

Based upon our review of the record, we conclude that the district court properly denied Storey's petition as procedurally barred. Storey offered no viable excuse for the delay in filing the instant petition or for raising the same claims again. Instead, Storey argues that the timeliness issue should be excused because he was not informed of the district court's ruling on his motion to extend the time for filing a post-conviction petition for a writ of habeas corpus. This argument may have been relevant to the previous petition, but certainly does not demonstrate good cause for Storey's delay in filing the instant petition.

Storey also attempted to demonstrate good cause for his delay and successiveness by alleging that the attorney appointed to represent him in his first post-conviction writ petition failed to take any affirmative actions in his representation. Storey argued that he did not adequately present his claims in his first petition and that his appointed attorney failed to provide any assistance. Claims of ineffective assistance of post-

²Storey v. State, Docket No. 31267 (Order Dismissing Appeal, December 23, 1999).

³See NRS 34.726(1).

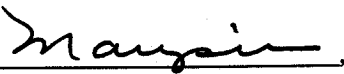
⁴See NRS 34.810(2).

⁵See NRS 34.726(1); NRS 34.810(3).

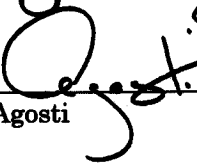
conviction counsel are not sufficient cause for filing a successive petition.⁶ Storey's argument that his own incompetence prevented him from adequately presenting his claims in his first petition is also insufficient.⁷ Thus, we conclude that the district court did not err in determining that Storey failed to demonstrate good cause to excuse his procedural defects. The district court properly denied Storey's petition.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹


_____, C.J.
Maupin


_____, J.
Young


_____, J.
Agosti

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General/Carson City
Clark County District Attorney
Darryl G. Storey
Clark County Clerk

⁶Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996).

⁷See Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.