

IN THE SUPREME COURT OF THE STATE OF NEVADA

BILLY JAMES COOKS,

No. 36566

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

DEC 14 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's post-conviction petition for a writ of habeas corpus.

On March 18, 1997, the district court convicted appellant, pursuant to a guilty plea, of robbery. The district court sentenced appellant to serve seventy-two (72) to one-hundred eighty (180) months in the Nevada State Prison. Appellant did not file a direct appeal.

On September 26, 1997, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant's counsel of record, Martin R. Boyers, moved to dismiss the petition without prejudice. On December 15, 1997, the district court dismissed appellant's petition without prejudice.¹

On May 23, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the

¹On October 19, 1998, appellant filed a motion to discharge Mr. Boyers as his attorney and to have Mr. Boyers transfer all documents to him. On December 29, 1998, the district court granted appellant's motion.

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district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On August 18, 2000, the district court entered a written order denying appellant's petition. This appeal followed.

Appellant filed his petition more than three years after entry of the judgment of conviction, more than two years after his first petition was dismissed without prejudice, and nearly a year and a half after he sought to have his counsel dismissed. Thus, appellant's 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 asserted that his counsel failed to inform him that his first petition had been dismissed. Even assuming that the failure of communication would constitute cause for part of the delay, it would not excuse the entire delay.⁴ Furthermore, appellant failed to demonstrate undue prejudice.⁵ Appellant failed to support his claims with sufficient factual allegations, which if true, would have entitled him to relief.⁶

²See NRS 34.726(1).

³See *id.*

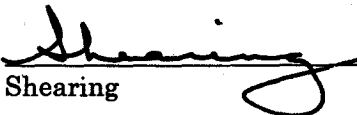
⁴See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense); Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995) (holding that trial counsel's failure to send the petitioner his file did not constitute good cause to excuse to excuse the procedural default).

⁵See NRS 34.726(1) (providing that "good cause" for the delay in filing a post-conviction petition exists if the petitioner can demonstrate to the satisfaction of the court that the delay is not the fault of the petitioner and that dismissal of the petition as untimely will unduly prejudice the petitioner).

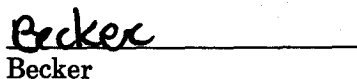
⁶See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984); see also Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

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.⁸

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Sally L. Loehrer, District Judge
Attorney General/Carson City
Clark County District Attorney
Billy James Cooks
Clark County Clerk

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

⁸We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.