

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER N. WENTZELL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36739

FILED

FEB 14 2002

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 April 29, 1996, the district court convicted appellant, pursuant to a guilty plea, of solicitation to commit murder (Count I), principal to the crime of attempted murder (Count II), and principal to the crime of theft (Count III). The district court sentenced appellant to serve in the Nevada State Prison a term of ten years for Count I, a term of twenty years for Count II, and a term of ten years for Count III with all

sentences to run consecutively. This court dismissed appellant's untimely notices of appeal for lack of jurisdiction.¹

On January 7, 2000, 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 reply. 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 August 30, 2000, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition almost four years after entry of the judgment of conviction. 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 argued the following: (1) ineffective assistance of counsel resulting in deprivation of the right to a direct appeal; (2) failure to receive the

¹Wentzell v. State, Docket No. 28882 (Order Dismissing Appeal, August 20, 1996); Wentzell v. State, Docket No. 30610 (Order Dismissing Appeal, November 7, 1997).

²See Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-1134 (1998) (holding that the one year period for filing a post-conviction habeas corpus petition begins to run from the issuance of the remittitur from a timely direct appeal); see also NRS 34.726(1) (providing that if no direct appeal is taken, a post-conviction petition for a writ of habeas corpus must be filed within one year after entry of the judgment of conviction).

³See NRS 34.726(1).


assistance of appointed counsel in pursuing his appeal deprivation claim; (3) impediments incident to appellant's pursuit of federal habeas corpus relief; (4) inadequate access to and assistance available at the prison law library; (5) unavailability of materials at the prison law library; (6) failure to receive his files from prison officials; and (7) impediments incident to prior post-conviction proceedings in the district court. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate adequate cause to excuse his delay of almost four years.⁴ Moreover, appellant did not demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice.⁵


⁴See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998) (holding that any "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) (holding that good cause must be an impediment external to the defense); Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989) (stating that a prisoner's pursuit of federal habeas relief did not constitute good cause for his failure to file a post-conviction petition within the one-year time period required by statute); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that appellant's limited intelligence or poor assistance in framing issues did not overcome the procedural bar); see generally Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995) (counsel's failure to send appellant files did not prevent appellant from filing a timely petition, and thus did not constitute good cause for appellant's procedural default).


⁵See Mazzan 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).

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Richard Wagner, District Judge
Attorney General/Carson City
Humboldt County District Attorney
Christopher N. Wentzell
Humboldt County Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁷We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.