

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD HADAWAY,

No. 37262

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 28 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
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 August 17, 1993, a jury returned a guilty verdict against appellant for one count of second degree murder with the use of a deadly weapon. Prior to sentencing, appellant's trial counsel was allowed to withdraw, and new counsel was appointed. Appellant then filed a motion for a new trial, raising claims of ineffective assistance of counsel. On February 10, 1994, after conducting an evidentiary hearing, the district court denied the motion for a new trial. The district court sentenced appellant to serve two consecutive terms of fifteen years in the Nevada State Prison. A written judgment of conviction was entered on February 25, 1994. This court dismissed appellant's appeal from his judgment of conviction and motion for a new trial.¹ The remittitur issued on December 19, 1995.

On February 20, 1996, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel, and counsel supplemented the petition. The State filed a motion to dismiss the petition, and appellant filed an

¹Hadaway v. State, Docket No. 26060 (Order Dismissing Appeal, November 30, 1995).

opposition to the motion. On July 31, 1996, the district court dismissed appellant's petition. This court dismissed appellant's subsequent appeal.²

On July 31, 2000, appellant filed a second 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 February 14, 2001, the district court dismissed appellant's petition. This appeal followed.³

Appellant filed his petition approximately four and one-half years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.⁴ Moreover, appellant's petition was successive because he had previously filed a motion for a new trial and a post-conviction habeas corpus petition.⁵ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁶

In an attempt to excuse his procedural defects, appellant argued that he received ineffective assistance of counsel at all stages of the proceedings. Appellant further argued that his delay should be excused because he had pursued federal habeas corpus relief. Finally, appellant argued that he was actually innocent of the crime of second degree murder with the use of a deadly weapon because the killing was committed in self-defense.

Based upon our review of the record on appeal, we conclude that the district court did not err in concluding appellant failed to demonstrate adequate cause to excuse the procedural defects. Appellant failed to demonstrate that an impediment external to the defense

²Hadaway v. State, Docket No. 29269 (Order Dismissing Appeal, January 30, 1997).

³On July 31, 2000, appellant filed a motion for specific discovery. The district court denied this motion in the February 14, 2001 written order dismissing appellant's habeas corpus petition. To the extent that appellant appeals from the denial of this motion, we conclude that the district court did not err in denying the motion. See NRS 34.780(2).

⁴See NRS 34.726(1).


⁵See NRS 34.810(1)(b)(2); NRS 34.810(2).

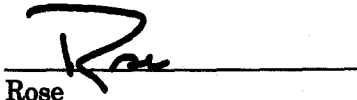
⁶See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

prevented him from timely pursuing his claims.⁷ Further, appellant did not demonstrate that failure to consider his petition would result in a fundamental miscarriage of justice.⁸

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


Shearing J.


Rose J.


Becker J.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General/Carson City
Clark County District Attorney
Donald Hadaway
Clark County Clerk

⁷McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996) (holding that ineffective assistance of post-conviction counsel did not constitute good cause); 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) (holding that a prisoner's pursuit of federal habeas relief did not constitute good cause).

⁸See 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).

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

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