

IN THE SUPREME COURT OF THE STATE OF NEVADA

TANIKO SMITH,

No. 37387

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

NOV 20 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 May 2, 1997, the district court convicted appellant, pursuant to a jury verdict, of first degree murder with the use of a deadly weapon (Count I), attempted murder with the use of a deadly weapon (Count II), two counts of robbery with the use of a deadly weapon (Counts III and IV), and attempted robbery with the use of a deadly weapon (Count V). The district court sentenced appellant to serve the following terms in the Nevada State Prison: for Count I, two consecutive terms of life without the possibility of parole; for Count II, two consecutive terms of 15 years, to be served consecutively to Count I; for Count III, two consecutive terms of 15 years, to be served consecutively to Count II; for Count IV, two consecutive terms of 15 years, to be served concurrently to Count III; for Count V, two consecutive terms of 7 1/2 years, to be served concurrently to Counts III and IV. This court dismissed appellant's appeal from his judgment of conviction and sentence.<sup>1</sup> The remittitur issued on December 22, 1998.

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<sup>1</sup>Smith v. State, Docket No. 30243 (Order Dismissing Appeal, December 3, 1998).

On October 30, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On that same date, appellant also filed a motion for the appointment of counsel, a motion for an evidentiary hearing, a supplemental petition for a post-conviction petition for a writ of habeas corpus, and a document attempting to demonstrate good cause for the delay in filing a petition for writ of habeas corpus. The State opposed the petition, the motion to appoint counsel, and the motion for an evidentiary hearing. 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 January 31, 2001, the district court denied appellant's post-conviction petition for a writ of habeas corpus. This appeal followed.

Appellant filed his petition approximately one year and ten months after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>2</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>3</sup>

In an attempt to demonstrate cause for the delay, appellant argued that his counsel filed a petition in federal court without appellant's permission and that his counsel failed to advise him of the state procedural bars. He also claimed that his attorney failed to properly present and preserve the constitutional issues raised in his direct appeal by way of a post-conviction habeas corpus proceedings. Appellant claimed that he is now filing his petition for a writ of habeas corpus because the federal court dismissed his petition to exhaust state grounds for relief. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Appellant failed

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


<sup>3</sup>See *id.*


to demonstrate good cause to excuse the procedural bar.<sup>4</sup>

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.<sup>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>6</sup>

  
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Young J.

  
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Agosti J.

  
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Leavitt J.

cc: Hon. Mark W. Gibbons, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Taniko Smith  
Clark County Clerk

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<sup>4</sup>See 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 pursuit of habeas corpus relief in federal court does not constitute good cause for failure to file a petition for post-conviction relief within one year after the resolution of a direct appeal).

<sup>5</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

<sup>6</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.