

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MIZE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38275

FILED

MAY 31 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
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 November 18, 1993, the district court convicted appellant, pursuant to a jury verdict, of robbery with the use of a deadly weapon. The district court sentenced appellant to serve a term of nine years plus an equal and consecutive term of nine years for the deadly weapon enhancement in the Nevada State Prison. This court dismissed appellant's direct appeal.¹ Remittitur issued on January 10, 1995.

On May 16, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, arguing that appellant's petition was untimely filed. Moreover, the State specifically pleaded laches. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to

¹Mize v. State, Docket No. 25193 (Order Dismissing Appeal, December 19, 1994).

represent appellant or to conduct an evidentiary hearing. On August 14, 2001, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than six years after this court issued remittitur for his direct appeal. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.³ Further, because the State specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁴

In an attempt to excuse his procedural defaults, appellant argued that that (1) he received ineffective legal assistance from an inmate who led him to believe that all he needed to do was to "file for appointment of counsel and his case would be back before the courts," and (2) that he could not understand his legal rights and obligations. 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 to demonstrate good cause and failed to overcome the presumption of prejudice to the State.⁵

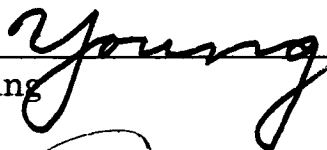
²See NRS 34.726(1).

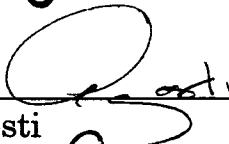
³See id.


⁴See NRS 34.800(2).

⁵See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that limited intelligence and reliance on an inmate law clerk unschooled in the law do not establish good cause).

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.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General/Carson City
Clark County District Attorney
James Mize
Clark County Clerk

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