

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD TANKSLEY,  
Appellant,  
vs.  
WARDEN, NEVADA STATE PRISON,  
DON HELLING,  
Respondent.

No. 38313

FILED

APR 30 2002

JANEITE 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 18, 1995, the district court convicted appellant, pursuant to a jury verdict, of first degree arson. The district court adjudicated appellant an habitual criminal and sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. This court affirmed appellant's judgment of conviction and sentence.<sup>1</sup>

On August 28, 1998, 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 district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On January 21, 1999, the district court dismissed appellant's petition for lack of jurisdiction because appellant

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<sup>1</sup>Tanksley v. State, 113 Nev. 997, 946 P.2d 148 (1997).

had failed to verify his petition. This court dismissed appellant's subsequent appeal.<sup>2</sup>

On May 17, 2001, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. 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 2, 2001, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than three years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>3</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>4</sup>

In an attempt to overcome his procedural defect, appellant argued that a fundamental miscarriage of justice occurred when this court affirmed his judgment of conviction and sentence. Specifically he claimed that (1) his appellate counsel was ineffective for failing to raise issues on direct appeal in "a constitutional light" which allowed this court to base the dismissal of his claims on state law; (2) his counsel failed to file a motion for rehearing after this court affirmed his judgment of conviction and sentence because this court relied on transcripts outside of the record on appeal; and (3) this court committed error in dismissing his direct appeal.

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<sup>2</sup>Tanksley v. State, Docket No. 33823 (Order of Affirmance, March 8, 2001).

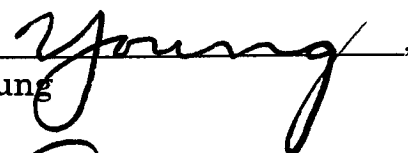
<sup>3</sup>See NRS 34.726(1).

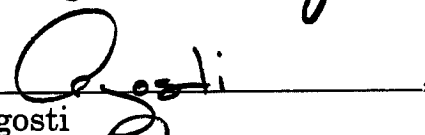
<sup>4</sup>See id.


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 adequate cause to excuse the delay in the filing his petition.<sup>5</sup> Appellant failed to show how the alleged errors of his appellate counsel and this court prevented him from filing a timely petition. Further, we conclude that appellant did not demonstrate the failure to consider his petition would result in a fundamental miscarriage of justice.<sup>6</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>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
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Young

 J.  
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Agosti

 J.  
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Leavitt

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<sup>5</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (good cause must be an impediment external to the defense).

<sup>6</sup>See 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).

<sup>7</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Michael R. Griffin, District Judge  
Attorney General/Carson City  
Carson City District Attorney  
Richard Tanksley  
Carson City Clerk