



IN THE SUPREME COURT OF THE STATE OF NEVADA

Jeremy Devon Wesson,
Appellant,
v.
The State of Nevada,
Respondent.

No. 89996

ORDER DISMISSING APPEAL

This is a direct appeal of a judgment of conviction, filed pursuant to NRAP 4(c). Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

The State has filed a motion to dismiss this appeal pursuant to NRAP 4(c)(4), arguing that the district court erred in finding good cause to permit the late filing of appellant's postconviction habeas petition. Specifically, the State contends appellant raised his appeal deprivation claim in an untimely postconviction petition and therefore it is procedurally barred. Appellant opposes the motion, arguing in support of the district court's determination of good cause.

NRS 34.726(1) provides that a postconviction habeas petition must be filed within one year after entry of the judgment of conviction, if no direct appeal from the judgment of conviction is taken, unless petitioner demonstrates good cause for the delay and actual prejudice. To raise a claim in an untimely postconviction petition, the petitioner bears the burden of proving specific facts that establish good cause and prejudice to overcome the procedural bar. *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003). Appellant's judgment of conviction was filed on February 3, 2020, and no timely direct appeal was taken. Accordingly, the one-year deadline to file a postconviction habeas petition expired on February 3, 2021. Appellant filed

his postconviction habeas petition on December 8, 2023, approximately two years and ten months after expiration of the one-year deadline for filing a timely petition. Thus, appellant’s petition was untimely filed and is procedurally barred absent a demonstration of good cause and actual prejudice. NRS 34.726(1).

“[A] petitioner can establish good cause for the delay under NRS 34.726(1) if the petitioner establishes that the petitioner reasonably believed that counsel had filed an appeal and that the petitioner filed a habeas corpus petition within a reasonable time after learning that a direct appeal had not been filed.” *Hathaway v. State*, 119 Nev. 248, 255, 71 P.3d 503, 508 (2003). Here, at sentencing held on January 30, 2020, appellant’s counsel stated “[appellant] wanted to do his notice of appeal and also request the transcripts. I will provide him with copies of both.” Thus, it appears that appellant had a reasonable belief that his counsel would file a notice of appeal of the judgment of conviction on appellant’s behalf. However, his counsel did not do so. Of significance, at an evidentiary hearing on May 23, 2024, appellant stated that he filed a motion to discharge his counsel on August 14, 2020, because he did not file a direct appeal as appellant had asked him to do. Additionally, on December 21, 2020, appellant filed a pro se notice of appeal from the judgment of conviction, which this court later dismissed as untimely. *Wesson v. State*, No. 82375, 2021 WL 651663 (Nev. Feb. 18, 2021) (Order Dismissing Appeal). Thus, as early as August 14, 2020—a full six months prior to expiration of the deadline to file a postconviction habeas petition—appellant was aware that a direct appeal had not been filed. And appellant was certainly aware by December 21, 2020, when he filed a pro se direct appeal—45 days prior to expiration of the NRS 34.726 deadline—that his counsel had not filed a direct appeal on his behalf.

The facts underpinning appellant's appeal-deprivation claim were thus known by him well within NRS 34.726's one-year period. Yet, appellant failed to file a postconviction habeas petition by the statutory deadline. This is fatal to his claim. *See Hathaway*, 119 Nev. at 253, 71 P.3d at 506 ("a claim or allegation that was reasonably available to the petitioner during the statutory time period would not constitute good cause to excuse the delay").

Even if part of the delay was attributable to appellant's counsel, it was still incumbent on appellant to file his petition within "a reasonable time" after discovering that no notice of appeal from the judgment of conviction had been filed by his counsel. *See id.* at 255, 71 P.3d at 508. Appellant's postconviction habeas petition, filed on December 8, 2023, was not filed within a reasonable time after he learned that his counsel had not filed a direct appeal on his behalf. Indeed, rather than filing his petition within a reasonable time after learning of his appeal-deprivation claim, appellant took roughly two and a half years to do so. Such a delay is not reasonable. *See, e.g., Kehrt v. State*, No. 65999, 2015 WL 632150 (Nev. Feb. 11, 2015) (Order Affirming in Part, Reversing in Part and Remanding) (concluding that an appellant's one-and-a-half-year delay in filing a postconviction petition after learning that a direct appeal was not pending "was not reasonable").

Appellant failed to meet his burden to demonstrate good cause for the delay in filing his postconviction habeas petition under NRS 34.726(1), and the district court's finding otherwise was clearly erroneous. The district court emphasized counsel's failure to file an appeal, appear at hearings, and communicate and advise appellant for months. The district court correctly found that the foregoing may show ineffective assistance of counsel and may excuse appellant's delay up to the time he learned his counsel had not filed an appeal. But this does not establish adequate cause for appellant's

subsequent—and prolonged—delay in filing his petition. *See Hathaway*, 119 Nev. at 252, 71 P.3d at 506 (“in order to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted”); *see also Kehrt*, 2015 WL 632150 (explaining that it is the appellant’s obligation to “explain the *entire* delay in filing his petition”) (emphasis added).

Next, the district court failed to identify any specific motions that were incorrectly denied or orders that were not followed, let alone show that they created an external impediment that prevented appellant from filing his petition within a reasonable time. *See Hathaway*, 119 Nev. at 252, 71 P.3d at 506 (to establish good cause, an “impediment external to the defense” must have prevented the petitioner from complying with the procedural time bar).

To the extent the district court alluded to the time appellant spent unsuccessfully requesting the appointment of counsel, transcripts, and his case file, they were not necessary to file a habeas petition and do not provide good cause for the delay. *See Hood v. State*, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995) (“Counsel’s failure to send appellant his files did not prevent appellant from filing a timely petition, and thus did not constitute good cause for appellant’s procedural default.”); *see also Lewis v. Legrand*, No. 66985, 2016 WL 562774 (Nev. Feb. 10, 2016) (“That [a petitioner’s] claims might have been litigated more effectively by appointed counsel does not constitute good cause, as the lack of access to trained legal expertise is not an impediment external to the defense and does not constitute good cause.”).

Also insufficient is the district court’s assertion that appellant’s counsel left appellant “totally unequipped and unprepared to advance his legal rights.” *See Sullivan v. State*, 120 Nev. 537, 542, 96 P.3d 761, 765 (2004) (holding trial counsel’s failure to inform a petitioner of the timing for the filing

of a postconviction petition did not constitute good cause to overcome the procedural time bar); *Phelps v. Dir., Nev. Dep't of Prisons*, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that a petitioner's limited intelligence and poor legal assistance from inmate law clerks did not establish good cause), *superseded by statute on other grounds as stated in State v. Haberstroh*, 119 Nev. 173, 180-81, 69 P.3d 676, 681 (2003).

The district court's determination that appellant "is a layperson without legal knowledge" is similarly unavailing. See *Hobbs v. State*, No. 87602, 2025 WL 227409 (Nev. Jan. 16, 2025) (Order of Affirmance) ("ignorance of the law is not an impediment external to the defense and does not provide good cause"); *Howard v. State*, No. 88223-COA, 2025 WL 227353 (Nev. Ct. App. Jan. 16, 2025) (Order of Affirmance) (rejecting the notion that "[defendant's] low IQ and his mental health issues" constituted good cause for his untimely habeas petition).

In sum, appellant failed to demonstrate good cause for the delay in filing his petition. Accordingly, the State's motion to dismiss this appeal is granted and this court

ORDERS this appeal DISMISSED.¹



Stiglich, J.



Cadish, J.



Lee, J.

¹Appellant's motion for extension of time to file the opening brief is denied as moot.

cc: Clark County District Attorney
Law Office of Amanda Pellizzari, LLC
Hon. Jerry A. Wiese, District Judge
The Eighth Judicial District Court of the State of Nevada, in and for the
County of Clark, District Court Clerk