

IN THE SUPREME COURT OF THE STATE OF NEVADA

BILLY LEE CHAMBERLAIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38590

FILED

AUG 13 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court denying a petition for a writ of habeas corpus.

Appellant Billy Lee Chamberlain was charged in September 1994 with one count of murder. He agreed to plead guilty, under North Carolina v. Alford,¹ to first-degree murder on the condition that the district court follow the State's sentencing recommendation of life in prison with the possibility of parole. The court accepted the plea and sentenced him accordingly. Judgment was entered in April 1995, but Chamberlain did not file a notice of appeal from the judgment until March 1997. This court dismissed the appeal as untimely, and remittitur issued in June 1997. In March 2000, Chamberlain filed a motion in the district court for leave to file a "belated petition" for a writ of habeas corpus. The court granted the motion, and Chamberlain filed a petition for post-conviction habeas relief in June 2000. After he was appointed counsel, a supplemental petition was filed. The State opposed Chamberlain's petition, arguing that it was untimely, subject to laches, and lacked merit. In June 2001, the district court denied the petition on its merits.

¹400 U.S. 25 (1970).

Chamberlain asserts that the district court erred in denying his habeas petition because his guilty plea was not knowing and voluntary. We affirm, concluding that the district court incorrectly decided the petition on the merits but was correct in denying it.²

Absent good cause for delay, a petitioner must file a habeas petition within one year after a judgment of conviction is entered or after this court issues its remittitur from a timely direct appeal.³ A court may also dismiss a petition if delay in its filing prejudices the State, and a delay of more than five years after entry of the judgment of conviction creates a rebuttable presumption of such prejudice.⁴ As required by statute, the State specifically pleaded laches, and Chamberlain had an opportunity to respond.⁵

Chamberlain did not file a timely direct appeal, and he filed his habeas petition more than five years after the entry of his judgment of conviction. Therefore, his petition was untimely, and prejudice to the State is presumed. To avoid the procedural bar of untimeliness, Chamberlain was required to demonstrate that the delay was not his fault and that dismissal of the petition would unduly prejudice him.⁶ But even

²See Franco v. State, 109 Nev. 1229, 1241, 866 P.2d 247, 255 (1993) (stating that this court will affirm the correct result of the district court's ruling even on different grounds).

³See NRS 34.726(1); Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

⁴See NRS 34.800.

⁵See NRS 34.800(2).

⁶See NRS 34.726(1).

absent good cause for the delay, this court would excuse the procedural bar if he demonstrated that a failure to consider his claims would result in a fundamental miscarriage of justice.⁷ Chamberlain has shown neither good cause nor any miscarriage of justice.

Chamberlain alleged in his proper person petition that he was "moved from one prison to another several times," "had his legal work taken away from him several times by correctional employees," was not allowed to go to the law library "due to . . . rules and regulations" and administrative segregation, had no legal counsel, and had only recently learned—contrary to misinformation he received when he entered his plea—that he could not appeal his conviction at any time. The record belies the last allegation: Chamberlain knew that his direct appeal was rejected as untimely in 1997. Further, lack of legal assistance does not constitute good cause.⁸ Finally, Chamberlain's indefinite allegations of having legal work taken away and access to the library denied do not demonstrate that the delay of over five years in filing his petition was not his fault.⁹


⁷See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); cf. NRS 34.800(1).


⁸See Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988), superseded on other grounds by statute as stated in State v. Haberstroh, 119 Nev. ___, 69 P.3d 676 (2003).


⁹See Pangallo v. State, 112 Nev. 1533, 1536, 930 P.2d 100, 102 (1996) (stating that a defendant seeking post-conviction relief must support any claims with specific factual allegations that if true would warrant relief), limited on other grounds by Hart v. State, 116 Nev. 558, 562-63, 1 P.3d 969, 972 (2000).

Chamberlain also failed to demonstrate prejudice. The guilty plea memorandum and the transcript of the entry of his plea belie his claim that his guilty plea was not knowing and voluntary.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Sally L. Loehrer, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
State Public Defender/Carson City
Clark County Clerk

¹⁰See *id.* ("The defendant is not entitled to an evidentiary hearing if the factual allegations are belied or repelled by the record."); NRS 34.810(3) ("[T]he petitioner has the burden of pleading and proving specific facts that demonstrate: . . . (b) Actual prejudice to the petitioner.").