

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANICE LUCINDA CARTER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38619

**FILED**

**DEC 12 2001**

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Appellant was originally convicted, pursuant to a guilty plea, of one count of attempted possession of a credit card without the cardholder's consent. The district court sentenced appellant to a prison term of 12 to 30 months. The judgment of conviction was entered on August 2, 1999. Appellant did not file a direct appeal.

On June 1, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in which she argued that the Clark County Public Defender's Office was ineffective for allowing her to plead guilty while she was on medication, and that her plea was involuntary because she was on medication. The State filed an opposition to the petition, arguing that the petition was untimely and therefore procedurally barred.

Although the district court did not conduct an evidentiary hearing, the district court record reflects that there was a hearing on August 30, 2001. According to the order denying the petition, which was prepared by the State, and the district court minutes, appellant was represented by the Clark County Public Defender. Based on these documents, a notice was sent to the Clark County Public Defender directing that office to comply with the requirements of NRAP 3C, and that office filed a fast track statement in this appeal. There is, however,

01-20915

no order in the record showing that the Clark County Public Defender was appointed to represent appellant for post-conviction proceedings. Further, the order denying the petition and the minutes both refer to appellant's petition as a proper person petition.

This court is unsure whether the minutes and order are inaccurate regarding the representation of appellant, or whether appellant was actually represented by the Clark County Public Defender in the proceedings below. Either alternative is troubling to this court. This court relies on the minutes and orders of the district court, and it is essential that they be accurate. Equally problematic is the prospect that the minutes and order are actually correct, and the district court appointed post-conviction counsel who had an inherent conflict of interest: specifically, counsel who was expected to argue his own ineffectiveness. Additionally, we note that the order denying the petition does not contain findings of facts and conclusions of law as required by statute.<sup>1</sup> We caution the district court that this courts expects: (1) the minutes and orders of the district court to accurately describe the proceedings below; (2) the district court to appoint appropriate conflict-free counsel if post-conviction counsel is to be appointed; and (3) that orders disposing of post-conviction petitions contain findings of fact and conclusions of law.

Despite the foregoing, however, it is clear from the record that appellant's petition was time-barred.<sup>2</sup> In the petition, appellant states that she did not file the petition within one year of the judgment of conviction because she did not have the money. "To establish good cause to excuse a procedural default, a defendant must demonstrate that some impediment external to the defense prevented him from complying with

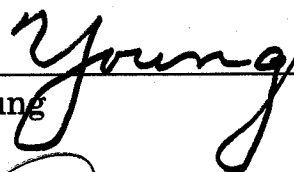
---

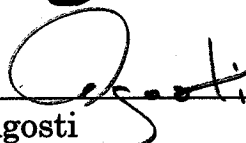
<sup>1</sup>See NRS 34.830(1) ("Any order that finally disposes of a petition, whether or not an evidentiary hearing was held, must contain specific findings of fact and conclusions of law supporting the decision of the court." (emphasis added)).


<sup>2</sup>See NRS 34.726(1) (unless there is a showing of good cause, a petition must be filed within one year after the entry of the judgment of conviction).

the procedural rule that has been violated."<sup>3</sup> We conclude that appellant failed to demonstrate good cause to excuse the untimely filing of the petition and that the district court did not err in denying the petition because of the procedural bar. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Jeffrey D. Sobel, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Public Defender  
Clark County Clerk

---

<sup>3</sup>Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).