

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES RYERSON WILLHOYT,  
Appellant,  
vs.  
WARDEN, NORTHERN NEVADA  
CORRECTIONAL CENTER, DON  
HELLING,  
Respondent.

No. 39201

FILED

OCT 28 2002

ORDER OF AFFIRMANCE

JANETTE F. BLOOM  
CLERK OF SUPREME COURT  
BY *Richard*  
COURT CLERK

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 October 25, 1994, the district court convicted appellant, after a jury trial, of seven counts of sexual assault upon a minor under the age of fourteen and six counts of lewdness with a minor. The district court sentenced appellant to serve four consecutive terms of life in the Nevada State Prison with the possibility of parole. The district court imposed the remaining terms to run concurrently. This court dismissed appellant's appeal from his judgment of conviction.<sup>1</sup> The remittitur issued on December 9, 1996.

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<sup>1</sup>Willhoyt v. State, Docket No. 26401 (Order Dismissing Appeal, November 19, 1996).

On November 7, 1997, appellant's retained post-conviction counsel filed a motion for extension of time to file a post-conviction petition for a writ of habeas corpus. Appellant's counsel requested an extension until February 9, 1998.<sup>2</sup> At a hearing attended by appellant's counsel, the district court it appears granted the motion to extend the time to file a habeas corpus petition until February 9, 1998.

On October 29, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition on the ground that the petition was procedurally time-barred and appellant had failed to demonstrate cause to excuse the extreme delay in his 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 April 23, 2002, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition almost five 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>

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<sup>2</sup>Appellant's counsel argued that he needed the additional time to obtain the appropriate records and documents necessary for filing a habeas corpus petition.

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

<sup>4</sup>See id.

In an attempt to demonstrate cause for the delay, appellant argued that his retained attorney had failed to file a post-conviction petition for a writ of habeas corpus. Appellant claimed that he had filed a complaint regarding his counsel's failure to pursue his post-conviction habeas corpus petition. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate adequate cause to excuse his delay. This court had held that good cause must be an impediment external to the defense.<sup>5</sup> A claim of ineffective assistance of post-conviction counsel cannot constitute good cause for a procedurally barred petition absent a statutory or constitutional right to the appointment of counsel.<sup>6</sup> Because appellant's counsel was retained and he was not entitled to the appointment of counsel, appellant's claim of ineffective assistance of post-conviction counsel does not excuse the delay in filing his petition. Even assuming without deciding that the district court's granting of appellant's motion for extension of time constituted good cause for filing a late petition in February of 1998, appellant failed to otherwise demonstrate cause for the entire length of his delay in filing his petition. Therefore, we affirm the order of the district court.


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<sup>5</sup>Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

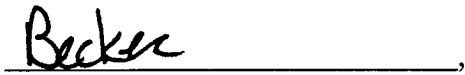
<sup>6</sup>See Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997); McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996).

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.<sup>8</sup>

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. Donald M. Mosley, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
James Ryerson Willhoyt  
Clark County Clerk

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

<sup>8</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.