

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES STEVEN ROBINSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39406

FILED

JUN 05 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 post-conviction petition for a writ of habeas corpus.

In 1993, appellant James Steven Robinson shot and killed Lemule Thompson. The State filed an indictment charging Robinson with murder with the use of a firearm, two counts of burglary, and two counts of grand larceny. Robinson agreed to plead guilty to first-degree murder and two counts of burglary, and the State agreed not to seek death, not to enhance the murder charge for use of a firearm, and to drop all other charges. After a plea canvass, the district court accepted his plea. In June 1994, the court entered judgment and sentenced Robinson to life in prison without possibility of parole and two consecutive ten-year prison terms. In July 2001, Robinson filed the instant habeas petition, claiming that he received ineffective assistance of counsel when he pleaded guilty. The district court denied the State's motion to dismiss the petition as untimely, but after holding an evidentiary hearing, the court denied the petition. We conclude that the petition was untimely and therefore affirm.

The district court erred in denying the State's motion to dismiss Robinson's petition as untimely. Robinson filed this petition more than seven years after entry of the judgment of conviction. NRS 34.726(1) requires a habeas petition to be filed within one year after entry of the

judgment of conviction or after issuance of remittitur on direct appeal, absent a showing of good cause for the delay. To establish good cause under the statute, a petitioner must demonstrate that the delay was not his fault and that dismissal would unduly prejudice him.

Robinson failed to demonstrate cause for his untimely filing. He testified that he lacked both access to the prison law library and assistance in preparing his petition. The State provided evidence rebutting Robinson's allegation that he lacked library access. But even assuming that lack of such access constituted good cause and that the allegation was credible, according to Robinson, the lack of access existed for at most four years of the seven-year delay. A need for legal assistance also does not establish cause. Circumstances such as limited intelligence, illiteracy, and inadequate assistance by inmate law clerks do not establish cause to overcome procedural default.¹ Further, the record shows that Robinson's counsel discussed post-conviction relief with him, suggested that he pursue such relief, and even sent him paperwork for a post-conviction habeas petition in December 1994.


The district court apparently felt constrained to reach the merits of Robinson's claims because his murder conviction had never received any review. This concern, however, does not permit a court to disregard statutory mandates. This court has disallowed "the discretionary application of the current procedural bar for waiver," based on the mandatory language in NRS 34.810.² NRS 34.726(1) similarly


¹See Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988).


²Pellegrini v. State, 117 Nev. 860, 886 & n.116, 34 P.3d 519, 536 & n.116 (2001).

provides that a habeas petition "must be filed," absent good cause, within the applicable one-year limit. Therefore, courts do not have discretion to disregard untimely filing and must determine whether a petitioner demonstrates good cause and prejudice. Of course, despite untimeliness or procedural default, a court must consider a claim if failure to do so would result in a fundamental miscarriage of justice.³ But Robinson has failed to demonstrate that his substantive claims have any merit whatsoever. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. David R. Gamble, District Judge
Kay Ellen Armstrong
Attorney General Brian Sandoval/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk

³See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).