

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM E. ROPER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39771

FILED

JAN 27 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOR  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY 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 January 15, 1997, the district court convicted appellant, pursuant to a jury trial, of one count of burglary, one count of first degree kidnapping of a victim sixty-five years of age or older, and one count of robbery of a victim sixty-five years of age or older. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole and terms totaling eight to twenty years. This court dismissed appellant's appeal from his judgment of conviction.<sup>1</sup> The remittitur issued on April 20, 1999.

On February 16, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On April 11, 2000, the district court denied

---

<sup>1</sup>Roper v. State, Docket No. 29953 (Order of Affirmance, March 24, 1999).

appellant's petition. On appeal, this court affirmed the order of the district court.<sup>2</sup>

On March 1, 2002, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. On March 1, 2002, appellant also filed a motion requesting the appointment of counsel. The State opposed the petition and motion. On April 29, 2002, appellant filed a motion requesting copies of district court minutes. 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 May 13, 2002, the district court denied appellant's motions. On May 13, 2002, the district court summarily denied appellant's petition. On June 3, 2002, the district court entered an order containing specific findings of fact and conclusions of law denying appellant's petition. This appeal followed.<sup>3</sup>

Appellant filed his petition almost two years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>4</sup> Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus.<sup>5</sup> Appellant's petition was procedurally barred absent a

---

<sup>2</sup>Roper v. State, Docket No. 36151 (Order of Affirmance, December 13, 2001).

<sup>3</sup>To the extent that appellant appealed from the denial of the motion for appointment of counsel and the motion requesting copies of district court minutes, we conclude that the district court did not abuse its discretion in denying appellant's motions.

<sup>4</sup>NRS 34.726(1).

<sup>5</sup>NRS 34.810(1)(b)(2); NRS 34.810(2).

demonstration of good cause and prejudice.<sup>6</sup> Based upon our review of the record on appeal and for the reasons discussed below, we conclude that the district court did not err in concluding that appellant failed to demonstrate adequate cause to excuse his procedural defects.

Appellant first argued that he had cause to file a successive petition because he had not received the assistance of counsel in filing his first petition and because he was not knowledgeable about the law. This court has held that good cause must be an impediment external to the defense.<sup>7</sup> Appellant did not have the right to counsel at the time he filed his first petition.<sup>8</sup> Thus, the fact that appellant did not receive the assistance of counsel for his first habeas corpus petition did not excuse the filing of a successive petition. Further, appellant cannot demonstrate good cause by claiming to lack knowledge about the law.<sup>9</sup> Therefore, the district court properly determined that appellant's petition was successive.

Appellant also asserted that his petition was timely filed because he had filed the petition within one year of this court's order of affirmance in his post-conviction appeal in Docket No. 36151. This court has held that the one-year period for filing a post-conviction habeas corpus petition begins to run from the issuance of the remittitur from a timely

---

<sup>6</sup>NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3).

<sup>7</sup>Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).


<sup>8</sup>NRS 34.750; Crump v. Warden, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997); McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996).


<sup>9</sup>See, e.g., Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that a petitioner's limited intelligence or poor assistance in framing issues will not overcome procedural bar).


direct appeal or from the entry of the judgment of conviction if no direct appeal is taken.<sup>10</sup> Thus, the remittitur in Docket No. 36151, the post-conviction appeal, did not alter or extend the time for filing a timely habeas corpus petition. Therefore, the district court properly determined that appellant's petition was procedurally time-barred.

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>11</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. Donald M. Mosley, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
William E. Roper  
Clark County Clerk

---

<sup>10</sup>Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-1134 (1998).

<sup>11</sup>Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).