

IN THE SUPREME COURT OF THE STATE OF NEVADA

MONTI CALVERT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39793

FILED

FEB 24 2003

ORDER OF AFFIRMANCE

JANETTE M. GLOOM
CLERK OF SUPREME COURT
BY J. Richards
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 September 10, 1998, the district court convicted appellant, pursuant to a guilty plea, of one count of second degree murder. The district court sentenced appellant to serve a maximum term of twenty-five years with a minimum term of ten years in the Nevada State Prison. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹

On December 17, 1999, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition on the ground that the petition was untimely filed. The district court appointed counsel to assist appellant, and counsel filed a response to the State's motion. On March 30, 2000, the

¹Calvert v. State, Docket No. 33556 (Order Dismissing Appeal, January 29, 1999).

district court determined that the petition was untimely filed and denied appellant's petition. This court dismissed appellant's subsequent appeal.²

On May 13, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 17, 2002, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately three and one-half years after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.³ Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus and the grounds raised in the instant petition could have been raised in the prior petition.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵

In an attempt to excuse his procedural defects, appellant argued that he was raising unexhausted claims. Further, he claimed that he received ineffective assistance of counsel. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant's petition was procedurally barred. Good

²Calvert v. State, Docket No. 35977 (Order Dismissing Appeal, August 16, 2000).

³See NRS 34.726(1).

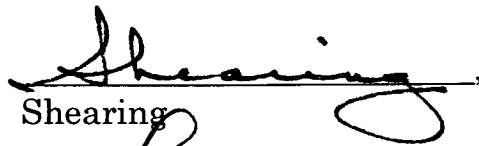
⁴See NRS 34.810(2).


⁵See NRS 34.726(1); NRS 34.810(3).

cause must be an impediment external to the defense.⁶ Raising claims in a procedurally barred petition for the purpose of exhaustion is not good cause. Neither is a claim of ineffective assistance of counsel that is itself procedurally defaulted.⁷ Because, appellant failed to demonstrate adequate cause to excuse his procedural defects, we affirm the order of the district court.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹

 J.
Shearing

 J.
Leavitt

 J.
Becker

⁶Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁷Edwards v. Carpenter, 529 U.S. 446, 453 (2000).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. Janet J. Berry, District Judge
Monti Calvert
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk