

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN SCOTT MEYER,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
CRAIG FARWELL,
Respondent.

No. 39801

FILED

NOV 08 2002

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.

On July 13, 1999, appellant Bryan Scott Meyer was convicted, pursuant to a guilty plea, of three counts of lewdness with a child under the age of 14 years and three counts of statutory sexual seduction. The district court sentenced Meyer to serve two consecutive prison terms of 10 years for two of the lewdness counts, a consecutive prison term of 48 to 120 months for the remaining lewdness count, and three consecutive prison terms of 24 to 60 months for the statutory sexual seduction counts. Meyer appealed, and this court affirmed his conviction.¹ The remittitur issued on February 29, 2000.

On January 8, 2002, Meyer filed a proper person post-conviction petition for a writ of habeas corpus, alleging that his trial counsel was ineffective. The State opposed the petition. The district court appointed counsel, who supplemented the petition. Without conducting an

¹Meyer v. State, Docket No. 34667 (Order Dismissing Appeal, January 26, 2000).

evidentiary hearing, the district court denied the petition. Meyer filed the instant appeal.

Preliminarily, we note that the fast track statement filed by appellate counsel Rick Lawton does not comply with this court's decision in Ramos v. State,² which provides that appellate counsel must argue for their clients without conceding that an appeal is without merit or frivolous. Indeed, in direct contravention to this court's holding in Ramos, the fast track statement submitted by appellate counsel concedes that the appeal is meritless stating that: "[c]ounsel finds no legitimate argument to challenge the [district] Court's dismissal." Counsel for appellant is cautioned that, in the future, filing a fast track statement that does not comport with the requirements of NRAP 3C and Ramos may result in the imposition of monetary sanctions and the striking of the fast track statement.

Nonetheless, we have thoroughly reviewed the record and conclude that the district court did not err in denying Meyer's petition. Meyer filed his petition approximately two years after this court issued the remittitur from his direct appeal. Thus, Meyer's petition was untimely filed.³ Meyer's petition was procedurally barred absent a demonstration of good cause and prejudice. In the petition, Meyer argued that his procedural default should be excused because appellate counsel neglected to inform him that his direct appeal had been dismissed and, therefore, Meyer did not know his direct appeal had been dismissed until May 30,

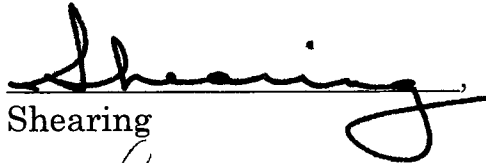
²113 Nev. 1081, 944 P.2d 856 (1997).

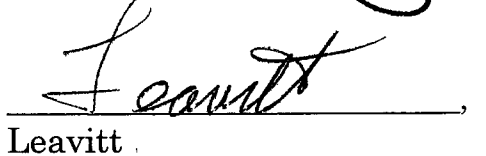
³NRS 34.726(1).

2001. Based on our review of the record, we conclude that Meyer has failed to demonstrate adequate cause to overcome the procedural bar.⁴

Having considered Meyer's contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. David A. Huff, District Judge
Rick Lawton
Attorney General/Carson City
Lyon County District Attorney
Lyon County Clerk

⁴See Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995) (holding that counsel's failure to send petitioner his files did not constitute good cause for filing an untimely petition); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that the petitioner's limited intelligence and poor assistance in framing issues did not overcome the procedural bar).