

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLAYTON RUCKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39947

FILED

APR 10 2003

ORDER OF AFFIRMANCE

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

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

On January 10, 1996, the district court convicted appellant Clayton Rucker, pursuant to a guilty plea, of use of a minor in production of pornography and sexual assault of a minor under fourteen years of age. The district court sentenced Rucker to serve two concurrent terms of life in the Nevada State Prison with the possibility of parole. This court dismissed Rucker's direct appeal for lack of jurisdiction.¹

On April 22, 2002, Rucker filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, and Rucker filed a reply. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent Rucker or to conduct an evidentiary hearing. On July 8, 2002, the district court denied Rucker's petition. This appeal followed.

¹Rial et al. v. State, Docket Nos. 33014, 33026, 33028, 33029, 33031, 33058, 33105, 33106, 33108, 33115, 33137, 33194 (Order Dismissing Appeals, November 20, 1998).

Rucker filed his petition more than six years after entry of the judgment of conviction. Thus, Rucker's petition was untimely filed.² Accordingly, Rucker's petition was procedurally barred absent a demonstration of cause for delay and prejudice.³

In an attempt to demonstrate good cause, Rucker argued that he believed that his trial counsel had filed a direct appeal on his behalf. According to Rucker, he did not discover that a direct appeal had not been filed until two years after his conviction. Rucker then filed a motion for delayed direct appeal, which this court construed as an untimely appeal of his judgment of conviction and dismissed for lack of jurisdiction on November 20, 1998. Even assuming Rucker's claim that he did not discover until two years after his conviction that a direct appeal had not been filed is true, he did not file this petition until more than four years after this court dismissed his motion to file a delayed direct appeal. Therefore, Rucker failed to demonstrate good cause for the untimely filing of this petition. Based upon our review of the record on appeal, we conclude that the district court did not err in denying the petition.⁴


²See NRS 34.726(1).

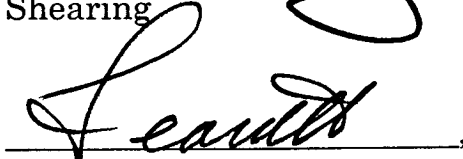
³See id.


⁴See Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1985) ("[T]he good cause necessary to overcome a procedural bar must be some impediment external to the defense.").

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Rucker is not entitled to relief and that briefing and oral argument are unwarranted.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Valorie Vega, District Judge
Clayton Rucker
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.