

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES EARL CLOTFELTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39997

FILED

OCT 15 2002

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 appellant's post-conviction petition for a writ of habeas corpus.

In the petition, appellant presented claims of ineffective assistance of counsel. The district court found that the majority of the claims were procedurally barred and that the remaining claim was not pleaded with the required specificity.¹ Appellant has not demonstrated that the district court erred as a matter of law.

Accordingly, for the reasons stated in the attached order of the district court, we

ORDER the judgment of the district court AFFIRMED.

Shearing J.

Shearing

Leavitt J.

Leavitt

Becker J.

Becker

¹See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

cc: Hon. Jerome Polaha, District Judge
Hardy & Associates
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

ORIGINAL

1 Code 2922

FILED

JUL 15 2002

RONALD A. LONGTIN, JR., CLERK
By *[Signature]*
DEPUTY

2
3
4
5
6
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE

9
10 JAMES EARL CLOTFELTER,

11 Petitioner,

Case No. CR00P1637B

12 vs.

Dept. No. 3

13 THE STATE OF NEVADA,

14 Respondent.
15
16 _____/

17 ORDER DISMISSING PETITION FOR POST-CONVICTION RELIEF

18 Petitioner was convicted by his plea of guilty on October 31, 2000 for the crime of
19 Burglary. He was sentenced to a term of 96 months of imprisonment with a parole eligibility
20 of 37 months, however the execution of that sentence was suspended and he was placed on
21 probation for an indeterminate period not to have exceeded 60 months.
22

23 On March 27, 2001 he was brought into court on a probation revocation proceeding
24 but was reinstated on probation. Then on June 26, 2001 he was again brought into court on a
25 probation revocation proceeding but this time his probation was revoked and he was
26 remanded into custody to begin serving his underlying sentence.

1 On December 24, 2001, 14 months after his conviction, Petitioner filed this petition
2 for a writ of habeas corpus seeking post-conviction relief.

3 In his original petition he alleged four grounds: his plea was involuntarily and
4 unknowingly entered; his attorney was ineffective and he failed to file a requested appeal; the
5 sentence was illegal and the court referenced prior convictions illegally. An attorney was
6 appointed for Petitioner and filed a supplemental petition on Petitioner's behalf on March 29,
7 2002 alleging four additional grounds for relief: ineffective assistance of counsel at the
8 probation revocation hearing and at the trial level and attacking the sentence and the original
9 charge to which Petitioner pleaded guilty. The State responded with a motion to dismiss both
10 petitions on May 7, 2002 and the petitioner filed a reply and submitted the matter on May 29,
11 2002.
12

13
14 In reviewing the file and the pleadings and after a review of the relevant law the court
15 is constrained to side with the State in this matter. The petition was filed too late for the court
16 to consider most of it. NRS 34.726 provides for the filing of such a petition within one year
17 of the date of the judgment of conviction, which in this case was October 31, 2000. The
18 Petition was filed on December 24, 2000, almost 14 months later. Petitioner has stated no
19 good cause and the court has not found any that would excuse the late filing. *Pellegrini v.*
20 *State*, 117 Nev. ___, 34 P.3d 519 (2001).
21


22 Therefore all those grounds which should have or could have been filed within one
23 year after the entry of conviction will not be considered by the court.
24

25 What remains for further consideration is the ground alleging ineffective assistance of
26

1 counsel at the probation revocation hearing. This allegation can be disposed of without a
2 hearing, as a matter of law. First, defendants have a right to effective assistance of counsel
3 only when appointment of counsel is mandatory and not discretionary, *Crump v. Warden*, 113
4 Nev. 293, 934 P.2d 247 (1997) and appointment of counsel is discretionary at a revocation
5 hearing. *Fairchild v. Warden*, 89 Nev. 524, 516 P.2d 106 (1973); *Gagnon v. Scarpelli*, 411
6 U.S. 778 (1973). Also, the petition was fatally flawed in that it lacked that degree of
7 specificity required by *Hargrove v. State*, 100 Nev. 498, 686 P.2d 222 (1984).
8

9 Therefore the State's motion is GRANTED: the Petition is dismissed.

10 DATED this 15th day of July, 2002.

11
12 
13 JEROME M. POLAHA
14 DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26