

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILMAN OSLUND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40140

FILED

MAY 23 2003

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

ORDER OF AFFIRMANCE

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 March 14, 2001, the district court convicted appellant, pursuant to an Alford plea,¹ of one count of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling four to ten years in the Nevada State Prison. Appellant did not file a direct appeal.

On December 26, 2001, appellant filed a proper person motion to correct an illegal sentence in the district court. The State opposed the motion. On January 14, 2002, the district court denied appellant's motion. No appeal was taken from this decision.

On May 14, 2002, appellant filed a proper person motion for extension of time to file a habeas corpus petition in the district court. On May 23, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant also filed a motion for the appointment of counsel. The State opposed the motions and

¹North Carolina v. Alford, 400 U.S. 25 (1970).

petition. 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 June 7, 2002, the district court denied appellant's motion for extension of time, and on August 5, 2002, the district court denied appellant's habeas corpus petition and motion for the appointment of counsel. This appeal followed.

Appellant filed his petition more than one year after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³

In an attempt to demonstrate cause for the delay, appellant argued that he was filing his petition within the time requested in his motion for extension of time. In that motion, appellant argued that he needed additional time to file his habeas corpus petition because the inmate law clerk that was helping him was placed in administrative segregation and his case files were seized by the prison for approximately two months. He also alleged that another inmate law clerk advised him that it was unnecessary to file a habeas corpus petition and that he should instead file a motion to correct an illegal sentence. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate adequate cause to excuse his delay.⁴ A petitioner's limited intelligence or poor assistance in framing

²See NRS 34.726(1).

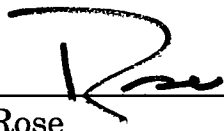
³See id.


⁴See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense).


issues is not good cause.⁵ Appellant failed to demonstrate cause for the entire length of his delay.⁶ Thus, we affirm the order of the district court denying appellant's petition.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. John S. McGroarty, District Judge
Wilman Oslund
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

⁶We note that appellant's own recitation of facts indicates that he had time before and after the seizure of his case files within which to file a timely habeas corpus petition.

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).