

IN THE SUPREME COURT OF THE STATE OF NEVADA

RON DWAYNE DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40618

FILED

OCT 21 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 dismissing appellant's post-conviction petition for a writ of habeas corpus:

On September 6, 1995, the district court convicted appellant, pursuant to a guilty plea, of one count of murder with the use of a deadly weapon and one count of first degree kidnapping. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after five years for first degree kidnapping, and two terms of life in prison with the possibility of parole for murder with the use of a deadly weapon. All sentences were imposed to run consecutively. This court dismissed appellant's untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹

On January 21, 1997, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court dismissed the petition without prejudice because the appellant failed to file a verified petition and send copies to the Attorney

¹Davis v. State, Docket No. 28975 (Order Dismissing Appeal, September 23, 1996).

General and District Attorney. Appellant appealed, and this court dismissed the appeal.²

On July 8, 2002, appellant filed an amended proper person post-conviction petition for writ of habeas corpus in the district court. The State opposed the petition, arguing that that the petition was untimely. Further, the State specifically pleaded laches. 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 November 25, 2002, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition approximately seven years after entry of the judgment of conviction.³ Thus, appellant's petition was untimely filed.⁴ Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.⁵ Further, because the State

²Davis v. State, Docket No. 29938 (Order Dismissing Appeal, April 21, 1999).

³Because appellant failed to file a timely appeal, the statutory time period is measured from entry of the judgment of conviction. See Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998) (holding that the "period for filing a post-conviction habeas corpus petition begins to run from the issuance of the remittitur from a timely direct appeal to this court . . . or from the entry of the judgment of conviction if no direct appeal is taken. A timely direct appeal is one in which the notice of appeal is filed with the district court within the time period prescribed by statute").

⁴See NRS 34.726(1).

⁵See id.

specifically pleaded laches, appellant was required to overcome the presumption of prejudice to the State.⁶

In an attempt to excuse his procedural defects, appellant argued that his unfamiliarity with the law and below-average intelligence caused him to misunderstand his options after the dismissal of his January 21, 1997, petition. It was not until March 2002 that appellant learned from a fellow inmate that a dismissal without prejudice did not prohibit him from re-filing his petition for a writ of habeas corpus in district court.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Appellant's arguments are not sufficient to excuse his procedural defects. Appellant failed to adequately explain the entirety of his seven year delay. We note that appellant's 1997 habeas corpus petition, even assuming it was verified, was untimely filed itself. Therefore, any misunderstanding about the effects of the dismissal without prejudice did not excuse the delay. Thus, appellant failed to demonstrate adequate cause to excuse his delay in the current petition.⁷ Appellant further failed to overcome the presumption of prejudice. Therefore, we affirm the order of the district court.

⁶See NRS 34.800(2).

⁷See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

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

Becker J.
Becker

Shearing J.
Shearing

Gibbons J.
Gibbons

cc: Hon. William A. Maddox, District Judge
Ron Dwayne Davis
Attorney General Brian Sandoval/Carson City
Carson City District Attorney
Carson City Clerk

⁸See Luckett 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.