

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN NEIL JENKINS,  
Appellant,  
vs.  
WARDEN, LOVELOCK  
CORRECTIONAL CENTER, CRAIG  
FARWELL,  
Respondent.

No. 40666

FILED

SEP 19 2003

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

ORDER OF AFFIRMANCE

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

On August 3, 1993, the district court convicted appellant, pursuant to a jury verdict, of one count of driving under the influence resulting in the death of another person. The district court sentenced appellant to serve a term of 20 years in the Nevada State Prison. On direct appeal, this court affirmed appellant's conviction.<sup>1</sup>

On October 14, 1996, with the assistance of counsel, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, and the district court conducted an evidentiary hearing. On November 12, 1996, the district court denied appellant's petition. On appeal, this court affirmed the district court's order denying the petition.<sup>2</sup>

---

<sup>1</sup>Jenkins v. State, Docket No. 24877 (Order Dismissing Appeal, November 30, 1994).

<sup>2</sup>Jenkins v. State, Docket No. 29701 (Order Dismissing appeal, August 19, 1997).

On September 17, 2001, appellant filed, in proper person, a second post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel, and conducted an evidentiary hearing. On November 26, 2002, the district court denied appellant's petition. This appeal followed.

Appellant's petition was successive because he had previously filed a post-conviction habeas petition.<sup>3</sup> Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice.<sup>4</sup> At the evidentiary hearing, counsel for appellant argued that the procedural defect should be excused because of ineffective assistance of post-conviction counsel. However, good cause cannot be based on ineffective assistance of post-conviction counsel.<sup>5</sup>

Additionally, appellant's petition was filed nearly four years after this court issued the remittitur from his direct appeal. Thus appellant's petition was untimely filed,<sup>6</sup> and therefore procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>7</sup> In an attempt to demonstrate cause for the delay, appellant's counsel argued at the evidentiary hearing that trial counsel, appellate counsel and post-conviction counsel were all ineffective. We conclude that appellant failed

---

<sup>3</sup>See NRS 34.810(1)(b)(2) NRS 34.810(2).

<sup>4</sup>See NRS 34.810(1)(b) NRS 34.810(3).

<sup>5</sup>McKague v. Warden, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996).


<sup>6</sup>See NRS 34.726(1).


<sup>7</sup>See id.

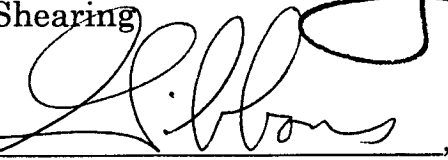
to demonstrate that "some impediment external to the defense" was the cause for the delay in filing his petition.<sup>8</sup>

In sum, appellant's petition was both successive and untimely and therefore procedurally barred, and we explicitly conclude that the petition should have been denied on that basis. Although it was not necessary for the district court to address the merits of the petition, the district court reached the correct result in denying the petition, and we

ORDER the judgment of the district court AFFIRMED.

  
Becker, J.

  
Shearing, J.

  
Gibbons, J.

cc: Hon. J. Michael Memeo, District Judge  
Matthew J. Stermitz  
Attorney General Brian Sandoval/Carson City  
Elko County District Attorney  
Elko County Clerk

---

<sup>8</sup>See Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998) (clarified by Hathaway v. State 119 Nev. \_\_\_, 71 P.3d 503 (2003)); see also Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).