

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN E. KARAKAS, JR. A/K/A
STEVEN EDWARD KARAKAS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40696

FILED

OCT 28 2003

ORDER OF AFFIRMANCE

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

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 September 2, 1998, the district court convicted appellant, pursuant to a guilty plea, of four counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve consecutive terms totaling forty years in the Nevada State Prison with minimum parole eligibility after sixteen years had been served. On October 6, 1998, an amended judgment of conviction was entered in the district court.¹ No direct appeal was taken.

On August 30, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the 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 December 6, 2002, the district court denied appellant's petition. This appeal followed.

¹The amended judgment of conviction corrected a clerical error in the original judgment of conviction.

Appellant filed his petition approximately four years 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 had not been informed of his right to appeal and that if he had not been waiting for counsel to file a notice of appeal that he would have filed an appeal himself. The district court applied this court's holding in Harris v. Warden⁴ and determined that appellant failed to demonstrate adequate cause to excuse his delay.

This court recently clarified its holding in Harris and held that "an appeal deprivation claim is not good cause if that claim was reasonably available to the petitioner during the statutory time period."⁵ A petitioner may, however, establish good cause for the delay "if the petitioner establishes that the petitioner reasonably believed that counsel had filed an appeal and that the petitioner filed a habeas corpus petition within a reasonable time after learning that a direct appeal had not been filed."⁶

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. Appellant failed to support his good cause claim with specific facts, which if true, would have

²See NRS 34.726(1).

³See id.

⁴114 Nev. 956, 964 P.2d 785 (1998).

⁵Hathaway v. State, 119 Nev. ___, 71 P.3d 503, 507 (2003).

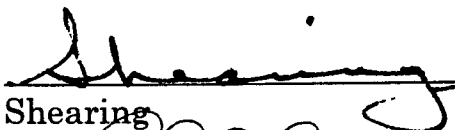
⁶Id.


entitled him to relief, and thus, appellant was not entitled to an evidentiary hearing in the instant case.⁷ Appellant failed to demonstrate that he reasonably believed that an appeal would be filed by his trial counsel. Further, appellant's claim that he was not informed of the right to a direct appeal could have been filed within one year from entry of the judgment of conviction. Thus, appellant failed to demonstrate adequate cause to excuse his delay.

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


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

cc: Hon. Michael A. Cherry, District Judge
Stephen E. Karakas Jr.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁷See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

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.