

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY JOE MOBLY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40726

FILED

OCT 21 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Ruben*  
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 February 20, 2001, the district court convicted appellant, pursuant to a guilty plea, of three counts of sexual assault. The district court sentenced appellant to serve three consecutive terms of life in the Nevada State Prison with the possibility of parole. This court affirmed appellant's judgment of conviction on direct appeal.<sup>1</sup> The remittitur issued on September 18, 2001.

On September 23, 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. Appellant filed a reply. 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 10, 2002, the district court dismissed appellant's petition. This appeal followed.

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<sup>1</sup>Mobly v. State, Docket No. 37622 (Order of Affirmance, August 24, 2001).

Appellant filed his petition more than one year after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.<sup>2</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>3</sup>

In an attempt to demonstrate cause for the delay, appellant argued that he hand-delivered the petition to prison officials on September 18, 2002. Thus, appellant argued that his petition should be construed to be timely filed pursuant to the "mailbox rule," or that an impediment external to the defense, his incarceration, interfered with the timely filing of his petition.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant had demonstrated good cause to excuse the delay in filing his petition. This court has declined to extend the mailbox rule to the filing of habeas corpus petitions.<sup>4</sup> Appellant failed to explain why he waited twenty-five days from the date that he signed the petition to deliver the petition to prison officials for mailing. Because appellant's petition was not filed within the applicable statutory period, appellant's petition was untimely. Appellant failed to demonstrate good cause for the delay.<sup>5</sup> Therefore, we affirm the order of the district court.

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<sup>2</sup>See NRS 34.726(1).

<sup>3</sup>See id.


<sup>4</sup>Gonzales v. State, 118 Nev. \_\_\_, 53 P.3d 901 (2002)

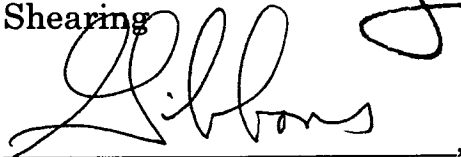
<sup>5</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

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.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Janet J. Berry, District Judge  
Timothy Joe Mobly  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>7</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.