

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAYFIELD ALLEN KIPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40793

FILED

FEB 05 2003

ORDER DISMISSING APPEAL

JUSTICE BLOOR
CLERK OF SUPREME COURT
BY *J. Richards*
CITY CLERK

This is a proper person appeal from a decision of the district court taking appellant's post-conviction petition for a writ of habeas corpus off calendar.

The docket entries transmitted with this appeal indicate that appellant filed a proper person post-conviction petition for a writ of habeas corpus and a document labeled, "good cause for delay in filing a petition for writ of habeas corpus" in the district court on October 14, 2002. The docket entries further indicate that a post-conviction petition for a writ of habeas corpus was also filed on October 22, 2002.¹ The minute entries of December 18, 2002, indicate that the district court took appellant's habeas corpus petition off calendar. Specifically, the district court minutes state, "Court noted the writ and motion filed by Defendant are well beyond the [statutory] time to file and, ORDERED, they will NOT BE RECEIVED." Appellant then filed the instant appeal.

¹It is unclear from the docket entries whether two post-conviction habeas corpus petitions were filed in the district court or whether the latter entry is repetitive of the October 14, 2002 entry.

Prior to the entry of a final, written judgment or order resolving appellant's habeas petition, and the timely filing of a notice of appeal, the district court technically retains jurisdiction over appellant's case.² A habeas corpus petition taken off calendar remains pending in the district court. Thus, this appeal is premature and must be dismissed for lack of jurisdiction.

However, this court notes its dissatisfaction with the district court's handling of the post-conviction proceedings in the instant case. Because a habeas corpus petition taken off calendar remains pending in the district court, the act of taking a petition off calendar places the petitioner in an indeterminate state awaiting some uncertain, future action by the district court to finally resolve the petition. Although this court is sympathetic to the overburdened dockets faced by the district court, this court must also balance the petitioner's right of access to the courts. We note that the district court may appropriately dismiss an untimely and successive post-conviction petition for a writ of habeas corpus if the petitioner failed to demonstrate good cause and prejudice to excuse the procedural defaults.³ It should do so, however, in a written order denying the petition which sets forth specific findings of fact and conclusions of law in support of its decision.⁴

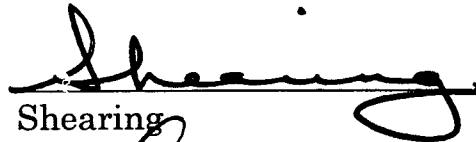
²Bradley v. State, 109 Nev. 1090, 864 P.2d 1272 (1993).

³NRS 34.726(1); NRS 34.810(2),(3).

⁴NRAP 4(b)(2).

Because appellant's petition remains pending in the district court, we

ORDER this appeal DISMISSED.⁵

 J.

Shearing

 J.

Leavitt

 J.

Becker

cc: Hon. Donald M. Mosley, District Judge
Mayfield Allen Kiper
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.