

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN BRIGGS A/K/A KELVIN  
BRIGGS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40882

FILED

NOV 05 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 May 15, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary while in possession of a firearm and one count of possession of burglary tools. The district court adjudicated appellant a habitual criminal for the burglary count and sentenced appellant to serve a term of seventy-two to one hundred and eighty months in the Nevada State Prison. The district court sentenced appellant to serve a one-year term in the Clark County Detention Center for possession of burglary tools. The latter term was imposed to run concurrently to the former. On June 6, 2001, the district court entered a duplicate judgment of conviction in the district court. No direct appeal was taken.

On October 17, 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 NRS 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On December 11, 2002, the district court orally dismissed appellant's petition, and on January 9,

2003, the district court entered a written order dismissing the petition. This appeal followed.

Appellant filed his petition more than one year after entry of the judgment of conviction.<sup>1</sup> 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>

This court recently recognized that NRS chapter 34 requires a petitioner to demonstrate good cause on the face of the petition.<sup>4</sup> Appellant did not attempt to demonstrate good cause on the face of the petition. Rather, appellant attempted to assert good cause in a response to the State's motion to dismiss the petition.<sup>5</sup> In an attempt to demonstrate cause for the delay, appellant claimed that he had good cause for the delay because he submitted his habeas corpus petition for mailing to prison officials on May 23, 2002, within the time period for filing a habeas corpus petition. Appellant submitted a letter from a prison official

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<sup>1</sup>Appellant's habeas corpus petition was filed more than one year after both judgments of conviction.

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

<sup>3</sup>See id.

<sup>4</sup>State v. Haberstroh, 119 Nev. \_\_\_, \_\_\_, 69 P.3d 676, 681 (2003).

<sup>5</sup>NRS 34.750(4) permits a petitioner to file a response to a motion to dismiss within fifteen days after service of the motion to dismiss. Appellant's response was received in the district court within the statutory period set forth in NRS 34.750(4). See NRS 178.472; NRS 178.482. The district court orally dismissed appellant's petition prior to the lapse of time to respond. We conclude that this was in error. However, we affirm the decision of the district court to dismiss the petition as procedurally barred because appellant failed to demonstrate adequate cause to excuse the delay for the reasons discussed above.

and a copy of brass slips for postage as proof that he delivered the habeas corpus petition in a timely fashion to prison officials. Appellant argued that the late filing of his petition was an impediment external to the defense.

Based upon our review of the record on appeal, we conclude that the district court properly determined that appellant's petition was procedurally time-barred. This court does not recognize the "mailbox rule" for purposes of filing a post-conviction petition for a writ of habeas corpus.<sup>6</sup> Although official interference may demonstrate good cause,<sup>7</sup> appellant failed to demonstrate that any such interference occurred in the instant case. Appellant's supporting documentation, copies of the brass slips, do not indicate that appellant ever mailed a copy of his habeas corpus petition to the clerk of the district court in a timely fashion.<sup>8</sup>

We further conclude that appellant failed to demonstrate that dismissal of his petition as untimely would unduly prejudice him. The majority of appellant's claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea.<sup>9</sup> Appellant's claim that he entered his guilty plea without an understanding of the rights that he

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<sup>6</sup>Gonzales v. State, 118 Nev. \_\_\_, 53 P.3d 901 (2002).

<sup>7</sup>See Hathaway v. State, 119 Nev. \_\_\_, \_\_\_, 71 P.3d 503, 506 (2003).


<sup>8</sup>Rather, the May 23, 2002 brass slip indicates that appellant mailed a copy of his petition to the attorney general, district attorney, director of the department of corrections, and warden of the institution. The brass slip in question does not contain any notation that a copy was sent to the clerk of the district court as required by NRS 34.735 and NRS 34.738(1).


<sup>9</sup>See NRS 34.810(1)(a).


waived was belied by the plea canvass.<sup>10</sup> Therefore, we conclude that appellant's habeas corpus petition was properly dismissed as procedurally time-barred.

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>11</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>12</sup>

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

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

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

cc: Hon. John S. McGroarty, District Judge  
Kevin Briggs  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>10</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>11</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>12</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.