

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES JAY RICEMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40962

FILED

DEC 10 2003

ORDER OF REVERSAL AND REMAND

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 denying appellant James Riceman's post-conviction petition for a writ of habeas corpus.

On August 9, 2001, the district court convicted Riceman, pursuant to a guilty plea, of one count each of burglary while in possession of a firearm and robbery. The district court sentenced Riceman to serve two concurrent terms of 60 to 150 months in the Nevada State Prison. Riceman did not file a direct appeal.

On August 23, 2002, Riceman 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. Riceman filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Riceman or conduct an evidentiary hearing. On December 9, 2002, the district court dismissed Riceman's petition. This appeal followed.

NRS 34.726(1) requires a habeas corpus petition to be filed within one year after entry of the judgment of conviction if no direct appeal is taken. Riceman's petition was filed 14 days beyond the one-year statutory period. Thus, Riceman's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice.¹

Riceman did not provide a good cause statement for the delay on the face of his petition.² Rather, Riceman provided a good cause statement in his response to a motion to dismiss filed by the State. In his response, Riceman presented several good cause arguments. Among these, he argued that interference by prison officials limited his access to the inmate law library. This argument, if true, might entitle Riceman to have his petition decided on the merits because official interference may be an impediment external to the defense.³ The district court, however, denied the petition without considering Riceman's good cause arguments. Riceman filed his response on November 12, 2002, 14 days after the State filed its motion to dismiss. Riceman's response was filed in the afternoon.

¹See NRS 34.726(1).

²State v. Haberstroh, 119 Nev. ___, ___, 69 P.3d 676, 681 (2003) (recognizing that NRS Chapter 34 requires a petitioner to demonstrate good cause on the face of the petition).

³See Hathaway v. State, 119 Nev. ___, ___, 71 P.3d 503, 506 (2003) (noting that an impediment external to the defense may be demonstrated by showing that some interference by officials made compliance impractical).

The district court held its hearing on the State's motion to dismiss in the morning.


NRS 34.750(4) provides that "[t]he petitioner shall respond within 15 days after service to a motion by the state to dismiss the action." Because the State filed a motion to dismiss, Riceman had a statutory right to file a response, and the district court had a duty to consider any claims or arguments presented in Riceman's response before deciding the State's motion. Riceman's response, although timely filed, was not considered by the district court and thus his good cause arguments were not addressed by the district court.


Therefore, we reverse the order of the district court and remand the matter to the district court for a hearing to consider whether Riceman demonstrated good cause to excuse his untimely delay. If the district court determines that Riceman demonstrated good cause for the delay, the district court shall consider the merits of all the claims raised in Riceman's habeas corpus petition. If the district court determines that Riceman failed to demonstrate good cause for the delay, the district court shall enter a written order containing specific findings of fact and conclusions of law relating to Riceman's good cause arguments.


Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter.⁴ Accordingly, we

⁴See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.⁵


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
James Jay Riceman
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.