

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RAY REEVES,  
Appellant,  
vs.  
WARDEN, ELY STATE PRISON, E.K.  
MCDANIEL,  
Respondent.

No. 41143

FILED

OCT 13 2003

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court dismissing appellant Michael Ray Reeves' post-conviction petition for a writ of habeas corpus.

On December 13, 2000, Reeves was convicted, pursuant to a guilty plea, of one felony count each of discharging a firearm into a building or room (count I), resisting or obstructing a public officer with a dangerous weapon (count II), and possession of a stolen motor vehicle (count III). The district court sentenced Reeves to serve consecutive prison terms of 13-60 months for count I, 19-48 months for count II, and 12-60 months for count III. The district court also ordered Reeves to pay restitution in the amount of \$25,300.00. Reeves did not pursue a direct appeal from the judgment of conviction and sentence.

On December 17, 2001, Reeves filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss Reeves' petition based on its untimeliness.<sup>1</sup>

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<sup>1</sup>See NRS 34.726(1) ("Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, if an appeal

*continued on next page . . .*

The district court appointed counsel to represent Reeves, and counsel submitted an opposition to the State's motion to dismiss and supplemental points and authorities in support of Reeves' petition. The district court did not conduct an evidentiary hearing, and on February 25, 2003, entered an order granting the State's motion to dismiss Reeves' petition. This timely appeal followed.

Reeves filed his habeas petition one year and four days after the filing of his judgment of conviction. Thus, Reeves' petition was untimely filed and procedurally barred absent a demonstration of good cause for the delay and prejudice.<sup>2</sup> "[G]ood cause necessary to overcome a procedural bar must be some impediment external to the defense."<sup>3</sup> Generally, a lower court's determination regarding the existence of good cause will not be disturbed absent an abuse of discretion.<sup>4</sup> Without good cause for the delay, this court will excuse the procedural bar only if the petitioner can demonstrate that a failure to consider his claims would result in a fundamental miscarriage of justice.<sup>5</sup>

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*. . . continued*

has been taken from the judgment, within 1 year after the supreme court issues its remittitur.").

<sup>2</sup>See *id.*; see also *Gonzales v. State*, 118 Nev. \_\_\_, 53 P.3d 901 (2002) (declining to extend the mailbox rule to the filing of habeas corpus petitions and holding that a habeas corpus petition must be filed in the district court within the applicable statutory period).

<sup>3</sup>*Harris v. Warden*, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998); see also *Murray v. Carrier*, 477 U.S. 478, 488 (1986).

<sup>4</sup>See *Colley v. State*, 105 Nev. 235, 773 P.2d 1229 (1989).

<sup>5</sup>See *Mazzan v. Warden*, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); cf. NRS 34.800(1).

In an attempt to excuse his procedural defects, Reeves claims that he was deprived of a direct appeal without his consent. Reeves also claims that he received ineffective assistance of counsel; however, he fails to indicate how counsel's alleged ineffectiveness resulted in the filing of an untimely habeas petition.<sup>6</sup> We conclude that the district court did not err in dismissing Reeves' petition. Reeves failed to demonstrate below that good cause existed to excuse the untimeliness of his petition, and on appeal, he has failed to challenge the district court's finding of no good cause. Additionally, this court has stated that "an allegation that trial counsel was ineffective in failing to inform a claimant of the right to appeal from the judgment of conviction . . . does not constitute good cause to excuse the untimely filing of a petition pursuant to NRS 34.726."<sup>7</sup> Reeves failed to support his good cause claim with specific facts, which, if

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<sup>6</sup>In his petition below, Reeves claimed that his alleged incompetency and mental condition constituted good cause sufficient to excuse the procedural bar. The district court concluded that Reeves failed to indicate how exactly his mental condition prevented him from filing a timely petition. On appeal, Reeves argues that counsel was ineffective for not raising the issue of his mental condition. Again, Reeves fails to articulate how his condition constitutes good cause. Notwithstanding the inadequacy of Reeves' argument, we have considered the issue and conclude that it has no merit. See Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (concluding that organic brain damage and borderline mental retardation is not good cause for filing an untimely habeas petition), superseded on other grounds by statute as stated in State v. Haberstroh, 119 Nev. \_\_\_, 69 P.3d 676 (2003).

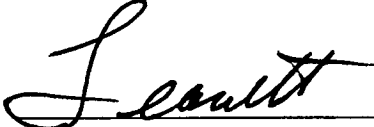
<sup>7</sup>Harris, 114 Nev. at 959, 964 P.2d at 787; see also Hathaway v. State, 119 Nev. \_\_\_, \_\_\_, 71 P.3d 503, 505 (2003) (clarifying the holding in Harris and stating that "an appeal deprivation claim is not good cause if that claim was reasonably available to the petitioner within the one-year statutory period for filing a post-conviction habeas petition").


true, would have entitled him to relief.<sup>8</sup> Therefore, we conclude that Reeves has failed to demonstrate good cause and prejudice sufficient to overcome the procedural bars to his petition, or show that he has suffered a manifest injustice.

Having considered Reeves' contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Maupin

cc: Hon. Brent T. Adams, District Judge  
Carter R. King  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>8</sup>See Pangallo v. State, 112 Nev. 1533, 1536, 930 P.2d 100, 102 (1996) (stating that a petitioner seeking post-conviction relief must support any claims with specific factual allegations that, if true, would warrant relief), limited on other grounds by Hart v. State, 116 Nev. 558, 562-63, 1 P.3d 969, 972 (2000).