

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE JOHN
S. MCGROARTY, DISTRICT JUDGE,
Respondents,
and
ANTHONY L. SMITH,
Real Party in Interest.

No. 41190

FILED

NOV 05 2003

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

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This is a petition for a writ of prohibition or, in the alternative, mandamus seeking to vacate a district court order. The district court remanded Anthony Smith's case to the juvenile court to reconsider whether Smith should have been certified as an adult. We grant the State's petition because Smith's habeas petition was procedurally barred.

FACTUAL BACKGROUND

Police arrested Smith and charged him with four counts of robbery with the use of a deadly weapon, four counts of conspiracy to commit robbery, and one count of battery with the intent to commit robbery. He was sixteen years old at the time. After being certified to stand trial as an adult, Smith pleaded guilty in district court to one count of robbery with the use of a deadly weapon. Smith did not file a direct appeal.

Nearly eighteen months after sentencing, Smith filed a post-conviction petition for a writ of habeas corpus. Among other arguments,

Smith alleged that his counsel during the district court proceedings was ineffective for failing to advise him of his right to file a direct appeal. Smith argued that this constituted good cause for not filing his habeas petition in a timely manner. Shortly thereafter, Smith filed a second post-conviction petition for writ of habeas corpus. In this petition, Smith alleged that he received ineffective assistance of counsel during his certification hearing in juvenile court. He claimed that his attorney never advised him of his right to appeal the certification and failed to plead a "diminished responsibility" defense.¹

During a hearing on Smith's first petition, the district court found that Smith's petition was time-barred by more than nineteen months. The district court determined that good cause did not exist for the delay. After conducting several subsequent hearings on the second petition, the district court determined that there was good cause for the delay because Smith was never informed of his right to appeal the certification order. This petition by the State for a writ of prohibition or, in the alternative, writ of mandamus followed.

DISCUSSION

The State claims that the district court abused its discretion when it remanded the certification order to the juvenile court because Smith's second petition was time-barred.

"[A] writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, NRS 34.160, or to control an arbitrary or capricious exercise of

¹Smith also made several other claims.

discretion."² This court may issue a writ of prohibition if a district court exceeds its jurisdiction.³ Where the petitioner has a plain, speedy and adequate legal remedy, mandamus or prohibition will not issue.⁴

If no direct appeal from a judgment of conviction is taken, a petition for a writ of habeas corpus challenging the validity of a judgment or sentence must be filed within one year after a judgment of conviction has been entered unless good cause is shown for the delay.⁵ A district court's determination of good cause will not be disturbed on appeal absent a clear abuse of discretion.⁶ "Generally, 'good cause' means a 'substantial reason; one that affords a legal excuse'"⁷ and "must be some impediment external to the defense."⁸ There is good cause for the delay if the petitioner demonstrates that the delay was not his fault and that he would be unduly prejudiced if the petition was dismissed as untimely.⁹

In Harris v. Warden,¹⁰ we held that "an allegation that trial counsel was ineffective in failing to inform a claimant of the right to

²Hickey v. District Court, 105 Nev. 729, 731, 782 P.2d 1336, 1337 (1989).

³Id. at 731, 782 P.2d at 1338.

⁴Id.

⁵NRS 34.726.

⁶Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

⁷Id. (quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw. 1981)).

⁸Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998).

⁹NRS 34.726(1).

¹⁰114 Nev. at 959, 964 P.2d at 787.

appeal from the judgment of conviction, or any other allegation that a claimant was deprived of a direct appeal without his or her consent, does not constitute good cause." Some other excuse for the delay must be demonstrated.¹¹ In Hathaway v. State,¹² we further explained,

[A]n appeal deprivation claim is not good cause if that claim was reasonably available to the petitioner during the statutory time period. Thus, claims that counsel failed to inform the petitioner of the right to appeal or that the petitioner received misinformation about the right to appeal would be reasonably available to the petitioner within the statutory time period.

The district court found that the first petition was time-barred because Smith did not show good cause for failing to file his petition within the statutory time period. Yet the district court allowed Smith to proceed on the merits of his second petition even though it was filed at a later date. During an evidentiary hearing, the district court found that good cause existed for the delay because Smith was not informed of his right to appeal the certification order.

We conclude that the district court exercised its discretion in an arbitrary and capricious manner. Smith's claim that his counsel failed to inform him of his right to appeal is insufficient to satisfy the good cause requirement. The district court should have dismissed Smith's second post-conviction petition for a writ of habeas corpus as untimely. Consequently, we conclude that a writ of mandamus should issue for this

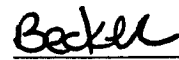
¹¹Id.

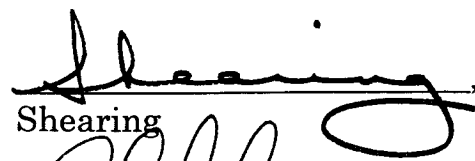
¹²119 Nev. ___, ___, 71 P.3d 503, 507 (2003).

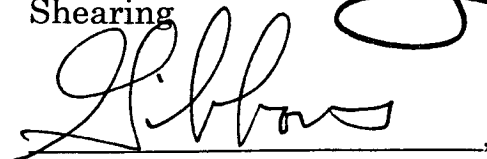
reason.¹³ Therefore, we need not address the State's remaining claims. Smith's claim that the State's petition for writ of prohibition or, in the alternative, mandamus should be dismissed based on the doctrine of laches is without merit.

Accordingly, we grant the petition and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order and to dismiss Smith's post-conviction petition.

It is so ORDERED.


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

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

¹³We further conclude that the State is without a plain, speedy, adequate remedy at law. Specifically, the district court's order does not fall within the appealable determinations specified in NRS 34.575(2).