

IN THE SUPREME COURT OF THE STATE OF NEVADA

LORNE DOUGLAS RICHARDSON
A/K/A JEFFREY JAMES BRAWLEY,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, CRAIG
FARWELL,
Respondent.

No. 41296

FILED

FEB 11 2004

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Lorne Richardson's post-conviction petition for a writ of habeas corpus.

On March 29, 2000, the district court convicted Richardson, pursuant to a guilty plea, of one count each of voluntary manslaughter with the use of a deadly weapon and attempted murder with the use of a deadly weapon. The district court sentenced Richardson to serve two terms of 24 to 120 months in the Nevada State Prison for the voluntary manslaughter conviction, and two terms of 48 to 240 months in the Nevada State Prison for the attempted murder conviction. All sentences were imposed to run consecutively. This court dismissed Richardson's

untimely appeal from his judgment of conviction and sentence for lack of jurisdiction.¹

On March 29, 2000, Richardson filed a motion to modify his sentence. The district court conducted a hearing on the motion. On May 19, 2000, the district court denied the motion. Richardson did not appeal.

On December 20, 2002, Richardson filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Richardson or to conduct an evidentiary hearing. On April 30, 2003, the district court denied Richardson's petition. This appeal followed.

Richardson filed his petition more than two and a half years after entry of the judgment of conviction.² Thus, Richardson's petition was untimely filed.³ Richardson's petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.⁴

In an attempt to demonstrate good cause for the delay, Richardson argued that he reasonably believed that his trial counsel had

¹Richardson v. State, Docket No. 37487 (Order Dismissing Appeal, April 4, 2001).

²Because Richardson did not file a timely direct appeal, the statutory time period is measured from entry of the judgment of conviction. See Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

³See NRS 34.726(1).

⁴See id.

filed an appeal on his behalf. When Richardson discovered that his trial counsel had not done so, he filed an untimely proper person direct appeal. After this court dismissed his appeal, Richardson filed the instant petition, alleging ineffective assistance of counsel based on an appeal deprivation claim.

An appeal deprivation claim does not constitute good cause for the delay if the petitioner could reasonably have raised it during the statutory time period.⁵ A petitioner may establish good cause for the delay, however, "if the petitioner establishes that the petitioner reasonably believed that counsel had filed an appeal and that the petitioner filed a habeas corpus petition within a reasonable time after learning that a direct appeal had not been filed."⁶

Richardson discovered that his attorney had failed to file an appeal on his behalf no later than February 20, 2001—the date he filed a proper person direct appeal.⁷ Richardson did not file his petition for a writ of habeas corpus until December 20, 2002, however. Richardson failed to demonstrate that he filed the instant petition within a reasonable time after learning that his trial counsel had not filed a direct appeal on his behalf. Accordingly, the district court did not err in denying his petition.

⁵Hathaway v. State, 119 Nev. ___, ___, 71 P.3d 503, 507 (2003).


⁶Id. at ___, 71 P.3d at 508.

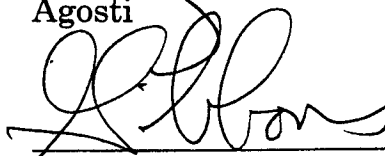
⁷In Richardson's proper person direct appeal, he alleged that his trial counsel was ineffective for failing to inform him of his right to a direct appeal.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Richardson is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹

 _____, J.
Becker

 _____, J.
Agosti

 _____, J.
Gibbons

cc: Hon. Joseph T. Bonaventure, District Judge
Lorne Douglas Richardson
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.