

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAYFIELD ALLEN KIPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41380

FILED

MAR 05 2004

ORDER OF AFFIRMANCE

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

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

On May 31, 1996, the district court convicted appellant, pursuant to a jury trial, of one count of burglary and one count of robbery. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve two consecutive terms of seventy-three to one hundred and eighty-three months in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction and sentence.¹ The remittitur issued on January 19, 1999.

On January 24, 2001, appellant filed a proper person motion for permission to file a late post-conviction petition for a writ of habeas corpus. The district court denied the motion. This court dismissed appellant's subsequent appeal for lack of jurisdiction.²

¹Kiper v. State, Docket No. 28924 (Order Dismissing Appeal, December 29, 1998).

²Kiper v. State, Docket No. 37511 (Order Dismissing Appeal, April 2, 2001).

On October 14, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court and a document setting forth good cause. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On March 14, 2003, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than three and one-half years after this court issued the remittitur from his direct appeal. Thus, appellant's petition was untimely filed.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴

In an attempt to demonstrate cause for the delay, appellant claimed that he was not notified about the dismissal of his direct appeal until October 16, 2000. Appellant claimed that this court erroneously mailed a copy of the order dismissing appeal to the Public Defender's Office because the district court allowed the Public Defender's Office to withdraw from representation while the direct appeal was pending in this court. Appellant claimed that this court should have recognized that due to the withdrawal that he was proceeding in proper person on direct appeal. Appellant further claimed that he has been in and out of lockdown and that he is a layman in the law.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to

³See NRS 34.726(1).

⁴See id.

demonstrate good cause to excuse the delay. This court properly sent a copy of the order dismissing appeal to appellant's attorney of record—the Public Defender's Office.⁵ The district court improperly permitted the Public Defender's Office to withdraw from representation on December 22, 1998, because the district court did not have jurisdiction to consider the motion to withdraw while the direct appeal was pending in this court.⁶ Further, appellant had no constitutionally-protected right to represent himself on direct appeal.⁷ Even assuming that appellate counsel's alleged failure to inform appellant of the dismissal of the direct appeal would explain some of the delay, appellant failed to demonstrate good cause for the entire length of the delay. By his own admission, appellant learned in October 2000 that his direct appeal had been dismissed. Yet, appellant waited an additional two years before filing his post-conviction petition for a writ of habeas corpus. Appellant's ignorance of the law or time spent in

⁵See NRAP 45(c) ("Service on a party represented by counsel shall be made on counsel.").

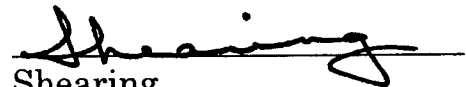
⁶See NRS 177.155 ("The supervision and control of the proceedings on appeal shall be in the appellate court from the time the notice of appeal is filed with its clerk"); NRS 177.305 ("After the certificate of judgment has been remitted, the supreme court shall have no further jurisdiction of the appeal or of the proceedings thereon, and all orders which may be necessary to carry the judgment into effect shall be made by the court to which the certificate is remitted."); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) ("Jurisdiction in an appeal is vested solely in the supreme court until the remittitur issues to the district court.").

⁷See Martinez v. Court of Appeal of California, 528 U.S. 152, 163 (2000); Blandino v. State, 112 Nev. 352, 354, 914 P. 2d 624, 626 (1996).

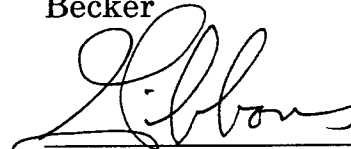
lockdown confinement does not adequately explain this two year delay.⁸ Therefore, we conclude that the district court properly denied appellant's petition as procedurally time-barred.

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, C.J.
Shearing

 _____, J.
Becker

 _____, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Mayfield Allen Kiper
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994) (holding that good cause must be an impediment external to the defense); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988) (holding that limited intelligence does not constitute good cause for delay in filing petition).

⁹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).