

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JAMEL WALLACE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41398

FILED

MAR 05 2004

ORDER OF AFFIRMANCE

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

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

On June 20, 2000, the district court convicted Wallace, pursuant to a jury verdict, of one count of burglary while in possession of a firearm (Count I), one count of conspiracy to commit robbery (Count II), one count of battery with the intent to commit a crime (Count III), and one count of robbery with the use of a deadly weapon (Count IV). The district court sentenced Wallace to serve two consecutive terms of 156 months in the Nevada State Prison with the possibility of parole in 24 months for Count IV. The district court imposed additional terms for Counts I, II, and III to run concurrently with Count IV. This court affirmed Wallace's conviction on direct appeal.¹ The remittitur issued on February 6, 2001.

On May 1, 2002, Wallace filed a proper person motion in the district court to file a belated post-conviction petition for a writ of habeas

¹Wallace v. State, Docket No. 36481 (Order of Affirmance, January 9, 2001).

corpus. The district court denied Wallace's motion. This court dismissed Wallace's appeal from that order for lack of jurisdiction.²

On February 26, 2003, Wallace filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Wallace filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Wallace or to conduct an evidentiary hearing. On May 13, 2003, the district court entered an order summarily denying Wallace's petition. This appeal followed.

Wallace's petition was untimely because it was filed more than two years after the remittitur issued from his direct appeal.³ Thus, Wallace's petition was procedurally barred absent a showing of good cause and undue prejudice.⁴

In an attempt to excuse the procedural defect in his petition, Wallace contended that his petition was untimely filed because his former appellate counsel did not notify him of the disposition of his direct appeal. Specifically, Wallace contended that he did not learn that this court denied his direct appeal until after the one-year period for filing a timely habeas corpus petition had expired.

The failure of appellate counsel to advise a petitioner concerning post-conviction proceedings does not generally establish good

²Wallace v. State, Docket No. 39721 (Order Dismissing Appeal, September 20, 2002).

³See NRS 34.726(1).

⁴See id.

cause to excuse an untimely petition.⁵ Rather, good cause is demonstrated by showing that an impediment external to the defense prevented the petitioner from filing a timely petition.⁶

In this case, and according to Wallace, he did not learn that his direct appeal had been dismissed until March 7, 2002. Even if true, Wallace did not file the instant petition until February 26, 2003, nearly one year after learning that his direct appeal had been dismissed, and over two years after this court issued the remittitur from that appeal.⁷

Although Wallace filed a motion to file a belated petition in the district court on May 1, 2002, and then unsuccessfully attempted to appeal the district court's unappealable determination denying that motion, this does not establish good cause to excuse his delay. This court dismissed Wallace's appeal from the district court order denying his motion to file a belated petition on September 20, 2002 for lack of an appealable determination. Wallace did not file the instant petition until over five months later. This delay was unreasonable. Therefore, we conclude that the district court properly determined that Wallace's allegation did not excuse his untimely petition.

⁵See Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998); see generally McKague v. Warden, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996).

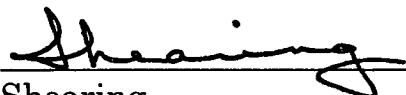
⁶See Pellegrini v. State, 117 Nev. 860, 886, 34 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994).


⁷See Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998) (holding that the one-year period for filing a post-conviction habeas corpus petition begins to run when this court issues the remittitur from a timely direct appeal from the judgment of conviction).

Wallace also contended that his petition should not be procedurally barred because his former appellate counsel did not timely return his legal case files to him. Yet, this court has held that the failure of counsel to release legal case files does not establish good cause to overcome the procedural bars to an untimely petition.⁸ Wallace failed to provide any other explanation to excuse the procedural defects in his petition, or to demonstrate that the denial of his petition would result in a fundamental miscarriage of justice.⁹ Therefore, we conclude that the district court did not err by summarily denying Wallace's untimely petition.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Wallace is not entitled to relief and that briefing and oral argument are unwarranted.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Shearing


_____, J.
Becker


_____, J.
Gibbons

⁸See Hood v. State, 111 Nev. 335, 338, 890 P.2d 797, 798 (1995); see also Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

⁹See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

¹⁰See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Lee A. Gates, District Judge
Charles Jamel Wallace
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk