

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT EARL JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41626

FILED

APR 22 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Robert Earl Jones' post-conviction petition for a writ of habeas corpus and motion for appointment of counsel.

On January 27, 1999, the district court convicted Jones, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon, and attempted murder with the use of a deadly weapon. The district court sentenced Jones to serve two terms of life in the Nevada State Prison with the possibility of parole after 240 months, and two terms of 32 to 144 months. All sentences were imposed to run consecutively. This court dismissed Jones' appeal from his judgment of conviction and sentence.¹ The remittitur issued on June 20, 2000.

On August 13, 2001, Jones filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On December 7, 2001, the district court denied

¹Jones v. State, Docket No. 33748 (Order Dismissing Appeal, May 25, 2000).

Jones' petition on the ground that it was untimely filed. This court affirmed the order of the district court.²

On March 11, 2003, Jones filed a proper person post-conviction petition for a writ of habeas corpus and a motion for appointment of counsel in the district court. The State opposed the petition and motion. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Jones or to conduct an evidentiary hearing. On June 5, 2003, the district court denied Jones' petition and motion. This appeal followed.³

Jones filed his petition almost three years after this court issued the remittitur from his direct appeal. Thus, Jones' petition was untimely filed.⁴ Jones' petition was procedurally barred absent a demonstration of good cause for the delay and prejudice.⁵

In an attempt to demonstrate good cause for his delay, Jones first argued that his claims were not subject to the procedural requirements of NRS chapter 34 due to their constitutional nature. In

²Jones v. State, Docket No. 39039 (Order of Affirmance, December 19, 2002).

³We conclude that the district court did not err in denying Jones' motion for appointment of counsel.

⁴See NRS 34.726(1) (providing that a petition that challenges the validity of a judgment or sentence must be filed within one year of this court's remittitur from the direct appeal, absent a showing of good cause for the delay).

⁵See id.

support of this assertion, Jones cited to NRS 34.180 and NRS 34.185. These statutes pertain to a petition for a writ of mandamus, however, not to a petition for a writ of habeas corpus. The instant petition is a challenge to Jones' judgment of conviction and sentence. As such, it is a petition for a writ of habeas corpus subject to the procedural requirements of NRS 34.720 through 34.830.⁶

Jones further attempted to excuse his delay by arguing that he misplaced documents and lacked legal assistance due to frequent transfers. We conclude that Jones did not establish that an impediment external to the defense prevented him from timely filing his petition.⁷ Because Jones failed to provide an adequate explanation for his untimely petition, he did not demonstrate good cause to excuse his delay. Consequently, the district court did not err in denying Jones' petition.⁸


⁶See NRS 34.720(1).


⁷See Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998) (stating that "the good cause necessary to overcome a procedural bar must be some impediment external to the defense"); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

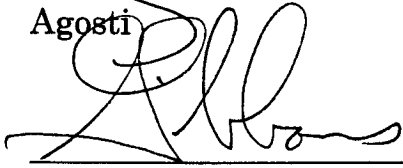
⁸To the extent that Jones' petition may also be construed as a motion to correct an illegal sentence, we conclude that Jones' claims are outside the very narrow scope of claims that may be raised in such a motion. See Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Jones is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Robert Earl Jones
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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