

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD ROBERT TODD,  
Appellant,  
vs.  
THE STATE OF NEVADA AND  
WARDEN, NORTHERN NEVADA  
CORRECTIONAL CENTER, DON  
HELLING,  
Respondents.

No. 41649

FILED

APR 07 2004

JANEITE M. BLOOM  
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 dismissing appellant's post-conviction petition for a writ of habeas corpus.

On January 20, 1995, the district court convicted appellant, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon and one count of second degree kidnapping with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling thirty years in the Nevada State Prison. On direct appeal, this court affirmed the judgment of the district court relating to appellant's guilt, but remanded the matter for a new sentencing hearing before a different district court judge due to the consideration of improper evidence at sentencing.<sup>1</sup> On May 7, 1997, the district court conducted a new sentencing hearing. The district court imposed terms identical to those contained in the first judgment of conviction. No appeal was taken from the May 7, 1997 judgment of conviction.

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<sup>1</sup>Todd v. State, 113 Nev. 18, 931 P.2d 721 (1997).

On May 28, 1997, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to assist appellant in the post-conviction proceedings. On March 11, 1999, after conducting an evidentiary hearing, the district court dismissed the petition. This court dismissed appellant's subsequent appeal.<sup>2</sup>

On January 9, 2003, appellant filed a second proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a reply. 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 June 13, 2003, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition more than five years after entry of the judgment of conviction.<sup>3</sup> Thus, appellant's petition was untimely filed.<sup>4</sup> Moreover, appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus and the petition was decided on the merits.<sup>5</sup> Appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.<sup>6</sup>

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<sup>2</sup>Todd v. State, Docket No. 33915 (Order Dismissing Appeal, July 7, 2000).

<sup>3</sup>In the instant case, the date to measure the time for filing a timely petition is the date on which the new judgment of conviction was entered—May 7, 1997.

<sup>4</sup>See NRS 34.726(1).

<sup>5</sup>See NRS 34.810(1)(b)(2); (2).

<sup>6</sup>See NRS 34.726(1); NRS 34.810(1)(b); (3).

In an attempt to excuse his procedural defects, appellant raised several claims of ineffective assistance of post-conviction counsel. Appellant argued that he had good cause to raise several of his claims again because the issues were not fully argued in the prior petition and the issues were not raised as constitutional violations. Appellant claimed that he had good cause to raise new claims because he received ineffective assistance of counsel in the prior post-conviction proceedings. Appellant further claimed that he could excuse his delay because his post-conviction counsel did not inform him that his prior post-conviction appeal had been decided.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause to excuse his procedural defects. Appellant did not have the right to counsel at the time he filed his first petition, and therefore he did not have the right to the effective assistance of counsel in that proceeding.<sup>7</sup> "[H]ence, 'good cause' cannot be shown based on an ineffectiveness of post-conviction counsel claim."<sup>8</sup> Appellant's good cause arguments fail because his claims relate to the ineffective assistance of post-conviction counsel. Therefore, we affirm the order of the district court dismissing appellant's petition.

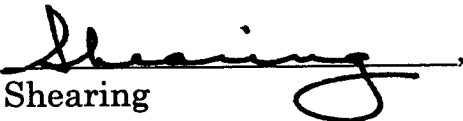
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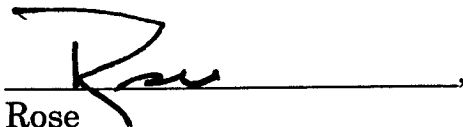
<sup>7</sup>See NRS 34.750; McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996); see also Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997).

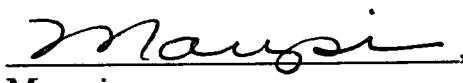
<sup>8</sup>McKague, 112 Nev. at 165, 912 P.2d at 258.

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.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

  
Shearing, C.J.

  
Rose, J.

  
Maupin, J.

cc: Hon. Peter I. Breen, District Judge  
Ronald Robert Todd  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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

<sup>10</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.