

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRE WALKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41754

FILED

JAN 08 2004

ORDER OF AFFIRMANCE

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

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

On June 19, 2000, Walker was convicted, pursuant to a jury verdict, of one count each of trafficking in a controlled substance and possession of a controlled substance. The district court adjudicated Walker a habitual criminal and sentenced him to serve two concurrent prison terms of 60 to 190 months. Walker appealed, and this court affirmed the judgment of conviction.¹ Walker filed a petition for rehearing, which this court denied.² The remittitur issued on December 14, 2001.

On March 25, 2003, Walker, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus. On April 10, 2003, the State moved to dismiss the petition. On May 2, 2003, Walker filed an opposition to the State's motion to dismiss. After hearing arguments from counsel, the district court dismissed Walker's petition,

¹Walker v. State, Docket No. 36331 (Order of Affirmance, July 10, 2001).

²Walker v. State, Docket No. 36331 (Order Denying Rehearing, November 28, 2001).

finding that it was untimely and procedurally barred. Walker filed the instant appeal.

Walker contends that the district court erred in dismissing his petition because he showed good cause to overcome the procedural default. In particular, as good cause to excuse the untimely filing of his petition, Walker contends that: (1) his post-conviction counsel, Gary Gowen, has been medically disabled almost continuously since December 23, 2002; (2) Walker's trial counsel ignored Gowen's repeated requests for Walker's case file; (3) Gowen was unable to file a timely petition on Walker's behalf because, on November 22, 2002, Gowen was unlawfully excluded from his primary law office where Walker's case file was located; and (4) Walker was indigent and did not have the money to hire an investigator.

We conclude the district court did not err in ruling that Walker failed to demonstrate good cause to overcome the procedural default.³ None of the reasons provided by Walker are sufficient to show an impediment external to the defense.⁴ Moreover, to the extent that Walker alleges that he demonstrated good cause because Gowen, his post-conviction counsel, was ineffective, we conclude the district court properly


³NRS 34.726(1).

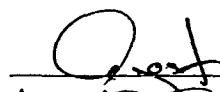
⁴See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); see also Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995) (holding that trial counsel's failure to turn over case files to a petitioner is not good cause to overcome a procedural default). We note that the district court properly rejected Walker's contention that the holding in Hood did not apply to him because, unlike the petitioner in Hood, Walker's claims were not belied by the record. Our holding in Hood applies to all petitioners attempting to show good cause, and is not limited to instances where the petitioner's claims of ineffective assistance of counsel are belied by the record.

rejected Walker's claim because allegations of ineffective assistance of post-conviction counsel are not an impediment external to the defense sufficient to overcome a procedural default.⁵

Having considered Walker's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Gary E. Gowen
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Hathaway v. State, 119 Nev. ___, ___, 71 P.3d 503, 506 (2003) ("in order [for a claim of ineffective assistance of counsel] to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted").