

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGER THOMAS KNOX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41868

FILED

MAY 10 2004

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court granting the State's motion to dismiss appellant Roger Thomas Knox's post-conviction petition for a writ of habeas corpus.

On March 17, 1999, Knox was convicted, pursuant to a plea of nolo contendere, of one count of battery with the intent to commit sexual assault. Knox was initially charged with two counts of sexual assault, battery with the intent to commit sexual assault, and false imprisonment for conduct directed towards his wife. The district court sentenced Knox to a prison term of 48-120 months, suspended execution of the sentence, and placed him on probation with several conditions for a period of 5 years; he was ordered to pay \$206.92 in restitution, and was given credit for 527 days time served in pretrial confinement. Knox did not pursue a direct appeal from the judgment of conviction. On September 15, 2000, the district court entered an order revoking Knox's probationary term and ordering him to serve the originally imposed sentence. Knox did not pursue an appeal from the district court's order revoking his probation.

On June 28, 2002, Knox filed a proper person post-conviction petition for a writ of habeas corpus in the district court.¹ The State filed a motion to dismiss Knox's petition based on its untimeliness. Knox did not file a reply or an opposition to the State's motion addressing the procedural bar. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent Knox or conduct an evidentiary hearing. On June 30, 2003, the district court granted the State's motion to dismiss Knox's petition. This timely appeal followed.

Knox filed his habeas petition more than three years after the entry of his judgment of conviction. Thus, Knox's petition was untimely filed and procedurally barred absent a demonstration of good cause for the delay and prejudice.² Good cause is established by showing that an impediment external to the defense prevented a petitioner from filing a timely petition.³ Generally, a lower court's determination regarding the existence of good cause and prejudice will not be disturbed absent an

¹On August 13, 2003, the district court appointed counsel to represent Knox for purposes of the instant appeal.

²See NRS 34.726(1); see also 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 from the entry of the judgment of conviction if no direct appeal was taken).

³See Harris v. Warden, 114 Nev. 956, 959, 964 P.2d 785, 787 (1998), clarified by Hathaway v. State 119 Nev. ___, 71 P.3d 503 (2003); see also Murray v. Carrier, 477 U.S. 478, 488 (1986).

abuse of discretion.⁴ Without good cause for the delay and prejudice, this court will excuse the procedural bar only if the petitioner can demonstrate that a failure to consider his claims would result in a fundamental miscarriage of justice.⁵

We conclude that the district court did not abuse its discretion in granting the State's motion to dismiss Knox's post-conviction petition for a writ of habeas corpus. In his petition below, Knox argued that his nolo contendere plea was coerced by counsel. Also, for the first time on appeal, Knox contends that, in the interest of judicial economy, the district court should have construed his post-conviction habeas petition as a motion to withdraw his guilty plea in order to bypass the procedural bar. We disagree.⁶ The district court determined that Knox's petition was untimely, and that he "failed to demonstrate good cause, actual prejudice, or a fundamental miscarriage of justice under the provisions of NRS 34.726(1), sufficient to overcome the procedural bars." Our review of the record on appeal reveals that in Knox's petition below, and again on appeal, he fails to even allege, let alone demonstrate, the existence of any good cause for the delay in the filing of his petition or prejudice. Moreover, Knox has failed to demonstrate that a fundamental miscarriage

⁴See Colley v. State, 105 Nev. 235, 773 P.2d 1229 (1989).


⁵See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996); cf. NRS 34.800(1).


⁶See Hart v. State, 116 Nev. 558, 564, 1 P.3d 969, 972-73 (2000).

of justice would result from a failure to consider the claims raised in his petition. Therefore, we conclude that Knox is not entitled to relief.

Accordingly, having considered Knox's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. James W. Hardesty, District Judge
Scott W. Edwards
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk