

IN THE SUPREME COURT OF THE STATE OF NEVADA

IVAN BEAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41975

FILED

NOV 03 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On July 13, 2000, the district court convicted appellant, pursuant to a guilty plea, of two counts of attempted sexual assault on a minor under the age of fourteen. The district court sentenced appellant to serve two consecutive terms of thirty-eight to ninety-six months in the Nevada State Prison. No direct appeal was taken.

On April 23, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss the petition. 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 17, 2003, the district court dismissed appellant's petition. This appeal followed.


Appellant filed his petition approximately thirty-three months after entry of the judgment of conviction. Thus, appellant's petition was

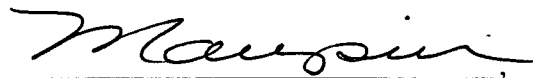
untimely filed.<sup>1</sup> Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.<sup>2</sup>

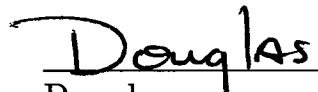
In an attempt to demonstrate cause for the delay, appellant argued that his delay should be excused because he had not been afforded an opportunity of a second opinion from a medical expert. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate good cause. Appellant failed to demonstrate that this claim was not reasonably available prior to the expiration of the one-year period for filing a timely petition.<sup>3</sup> Thus, we affirm the order of the district court.

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>4</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

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

<sup>2</sup>See *id.*

<sup>3</sup>*Hathaway v. State*, 119 Nev. 248, 71 P.3d 503 (2003).

<sup>4</sup>See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. John S. McGroarty, District Judge  
Ivan Bean  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk