

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACQUIN KEYSHAWN WEBB,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42071

FILED

APR 27 2004

ORDER OF AFFIRMANCE

JANETTE M. GLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

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

On May 11, 2001, the district court convicted appellant, pursuant to a jury verdict, of one count of first degree murder by child abuse and one count of child abuse and neglect with substantial bodily harm. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole for murder and a concurrent term of ninety-six to two-hundred and forty months for child abuse and neglect.¹ This court affirmed appellant's conviction on direct appeal.² The remittitur issued on June 11, 2002.

On June 17, 2003, appellant filed a 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

¹On July 26, 2001, the district court entered an amended judgment of conviction clarifying that appellant was required to serve a mandatory minimum of twenty years in prison before being eligible for parole.

²Webb v. State, Docket No. 38027 (Order of Affirmance, May 14, 2002).

34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On September 3, 2003, the district court denied appellant's petition. This appeal followed.

Appellant's petition was untimely filed because it was filed six days after the statutory deadline for filing a timely habeas corpus petition.³ Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.⁴

In an attempt to demonstrate cause for the delay, appellant argued that his appellate counsel failed to deliver his files for a period of nine months and that the files when sent were incomplete. Based upon our review of the record on appeal, we conclude that the district court did not err in denying appellant's petition. Appellant has failed to demonstrate that trial counsel's failure to send appellant his files prevented appellant from filing a timely petition.⁵ Further, appellant failed to demonstrate that he would be unduly prejudiced by the dismissal of his petition as untimely because appellant failed to raise any claims of error that worked to his actual and substantial disadvantage.⁶ Therefore,

³See NRS 34.726(1). Although appellant dated and signed his petition within the period for filing a timely petition, the mailbox rule is inapplicable to habeas corpus proceedings; rather a habeas corpus petition must be filed in the district court within the applicable statutory period. See Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002) (declining to extend the mailbox rule to the filing of a habeas corpus petition).

⁴See 34.726(1).


⁵See Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995).


⁶See Hogan v. Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 716 (1993). We have considered appellant's claims only to the extent
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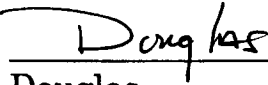
we conclude that the district court did not err in determining that appellant's petition was procedurally time barred.

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Jackie Glass, District Judge
Jacquin Keyshawn Webb
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

... continued
necessary to determine whether appellant would be unduly prejudiced by the dismissal of his petition as untimely.

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).