

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTIAN D. WALKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42292

FILED

MAR 05 2004

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Appellant was originally convicted, pursuant to a jury verdict, of one count of attempted murder with the use of a deadly weapon. This court affirmed appellant's conviction.¹ The remittitur issued on July 19, 1999.

On August 13, 2001, the district court appointed post-conviction counsel for appellant. Nearly two years later, on July 14, 2003, counsel filed a post-conviction petition for a writ of habeas corpus. In the petition, counsel argued that there was good cause for the delay because appellant had not been informed by previous counsel that his direct appeal had been dismissed.

The State filed a motion to dismiss the petition, arguing that it was procedurally barred. Counsel for appellant filed an opposition, and after allowing the parties to argue the motion to dismiss, the district court

¹Walker v. State, Docket No. 33637 (Order Dismissing Appeal, June 21, 1999).

dismissed the petition, finding that it was procedurally barred, and that appellant had failed to demonstrate good cause.²

Initially, we note that generally this court will not disturb a district court's finding regarding good cause, "except for clear cases of abuse."³

Appellant's petition was filed nearly four years after this court issued the remittitur in his direct appeal. Appellant argues that he did not become aware that his direct appeal had been dismissed until May, 2001, after the death of his previous attorney, John Fadgen. Appellant further argues that Fadgen told him that his direct appeal was still pending "sometime during the year 2000," when in fact it had already been dismissed.

Appellant argues that he is entitled to relief based on this court's decision in Hathaway v. State.⁴ Specifically, appellant points to this court's holding that "a petitioner can establish good cause for the delay under NRS 34.726(1) if the petitioner establishes that the petitioner reasonably believed that counsel had filed an appeal and that the petitioner filed a habeas corpus petition within a reasonable time after learning that a direct appeal had not been filed."⁵

In the instant case, appellant concedes that he learned that his appeal had been dismissed in May, 2001. The petition was not filed for

²See NRS 34.726(1).

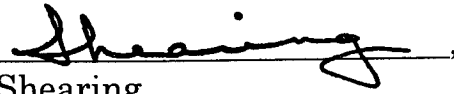
³Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

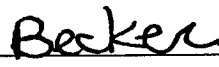
⁴119 Nev. ___, 71 P.3d 503 (2003).


⁵Id. at ___, 71 P.3d at 508.

another two years. The district court found that appellant did not file his petition within a reasonable time after learning that his direct appeal had been dismissed. We conclude that appellant has not demonstrated that the district court clearly abused its discretion. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Shearing


_____, J.
Becker


_____, J.
Gibbons

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