

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES JEFF TURNER, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42318

FILED

AUG 19 2004

ORDER OF REVERSAL AND REMAND

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

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On July 30, 2002, the district court convicted appellant, pursuant to an Alford plea,¹ of one count of first degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole. No direct appeal was taken.

On August 4, 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. Appellant filed a response, and the State supplemented its 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 October 29, 2003, the district court denied appellant's petition. This appeal followed.

Appellant filed his petition five days beyond the one year statutory time period.² Appellant's petition was procedurally barred

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²See NRS 34.726(1).

absent a demonstration of cause for the delay and prejudice.³ Good cause to excuse the delay must be an impediment external to the defense.⁴ An impediment external to the defense may be demonstrated by a showing that interference by prison officials prevented the petitioner from filing a timely petition.⁵

In an attempt to demonstrate cause for the delay, appellant argued that interference by prison officials prevented him from meeting the July 30, 2003 deadline to file a timely petition. Specifically, appellant claimed that as of June 13, 2003, the prison law library was closed to inmates and that no inmate law clerk was available to aid him in his unit. He asserted that his first request, made on July 17, 2003, to photocopy his petition was ignored. Following a second request on July 22, 2003, he was informed that he was able to photocopy the petition in the library and that it was his responsibility to know the photocopy procedures. However, he claimed that the prison law library was still closed, and thus, he was not able to make copies himself. A correctional officer was finally able to have his petition copied, and he submitted his habeas corpus petition and brass slips for legal postage on July 25, 2003. However, he was informed on July 28, 2003, that he had filled out the brass slips incorrectly despite the fact that the brass slips had already been approved by another correctional officer. The habeas corpus petition and required copies were finally mailed on July 29, 2003. Appellant attributes the fact that the

³See id.

⁴See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁵See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).

petition was filed five days late to the actions taken by the prison officials in the six weeks preceding the filing deadline.

In denying the petition, the district court concluded that closure of the prison law library and photocopy procedures did not constitute good cause. However, these conclusions are not accompanied by a specific analysis of the facts in the instant case. Although this court held in Gonzales v. State⁶ that the "mailbox rule" does not apply to habeas corpus petitions, Gonzales should not be read to prevent the courts from considering whether actions taken by prison officials in a particular case interfered with the timely filing of a petition. Although appellant arguably waited until the eleventh hour to arrange to have his petition copied and mailed, appellant is permitted one year to submit a petition for filing. The procedures in the prison should not be implemented in such a way to prevent a petitioner, even a petitioner that waits until the eleventh hour, from filing a timely petition. It appears that the cumulative effect of the actions taken by prison officials in the weeks preceding the filing deadline may have caused appellant's petition to be filed five days late.

It appeared from this court's preliminary review of the record on appeal that the district court may have erred in failing to conduct an evidentiary hearing to determine whether appellant's assertions were true, and if true, whether cumulatively these assertions excused the five-day delay. There is nothing in the record to belie appellant's assertions relating to the actions taken by prison officials; to the contrary, appellant has attached copies of his correspondence with prison officials during the time period at issue. Further, the district court did not consider whether

⁶118 Nev. 590, 53 P.3d 901 (2002).

appellant would be unduly prejudiced by the dismissal of his petition as untimely.

This court ordered the State to show cause why this matter should not be remanded for an evidentiary hearing on the issue of good cause. The State responded that it does not oppose an evidentiary hearing on the issue of good cause. Therefore, we reverse the district court's order in its entirety, and we remand this matter to the district court to conduct an evidentiary hearing on the issue of good cause. We conclude that oral argument and briefing are unwarranted in this matter.⁷ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁸

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

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

⁸We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein.

cc: Hon. Donald M. Mosley, District Judge
James Jeff Turner Jr.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk