

IN THE SUPREME COURT OF THE STATE OF NEVADA


MARY ROSE BONAPARTE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42335

FILED

JUL 8 2004

ORDER OF AFFIRMANCE

DANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

On September 17, 1997, the district court convicted appellant, pursuant to a guilty plea, of one count of theft. The district court sentenced appellant to serve a term of twelve to thirty-six months in the Nevada State Prison. The district court imposed this sentence to run consecutively to a federal sentence. This court dismissed appellant's appeal from her judgment of conviction.¹ The remittitur issued on March 18, 1998.

On October 7, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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

¹Bonaparte v. State, Docket No. 31232 (Order Dismissing Appeal, February 27, 1998).

October 24, 2003, the district court dismissed appellant's petition. This appeal followed.

Appellant filed her petition approximately five and one-half years after this court issued the remittitur from her direct appeal. Thus, appellant's petition was untimely filed.² Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³ Good cause must be an impediment external to the defense.⁴

In an attempt to demonstrate cause for the delay, appellant argued that she did not have access to Nevada legal resources because she was incarcerated in California. Appellant asserted that she had pursued federal habeas corpus relief, and only learned in 2000 that she should have instead filed a habeas corpus petition in Nevada. She attempted to get copies of Nevada law books to no avail.

Based upon our review of the record on appeal, we conclude that the district court properly determined that appellant failed to demonstrate adequate cause to excuse her delay. Appellant failed to demonstrate that an impediment external to the defense prevented her from filing a timely petition. Ignorance of legal procedures is not an impediment external to the defense.⁵ Further, the fact that appellant mistakenly sought relief in federal court is not an impediment external to

²See NRS 34.726(1).

³See id.


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

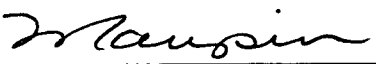
⁵See Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).


the defense.⁶ Appellant failed to demonstrate that five and one-half years was a reasonable amount of time to delay in filing a petition given her incarceration circumstances. Therefore, we affirm the order of the district court dismissing appellant's petition.

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.⁸


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

⁶See Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989).

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

⁸We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Janet J. Berry, District Judge
Mary Rose Bonaparte
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk