

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT E. VAN WORMER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42477

FILED

JUL 27 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Robert Van Wormer's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On February 22, 1984, the district court convicted Van Wormer, pursuant to a guilty plea, of one count of sexual assault. The district court sentenced Van Wormer to serve a term of life in the Nevada State Prison with the possibility of parole. Van Wormer did not file a direct appeal.

On September 10, 2003, Van Wormer filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition, arguing that it was untimely filed. Moreover, the State specifically pleaded laches. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Van Wormer or to conduct an evidentiary hearing. On November 19, 2003, the district court denied Van Wormer's petition. This appeal followed.

Van Wormer filed his petition more than nineteen years after the entry of his judgment of conviction. Thus, Van Wormer's petition was

untimely filed.¹ Van Wormer's petition was procedurally barred absent a demonstration of good cause and prejudice.² Further, because the State specifically pleaded laches, Van Wormer was required to overcome the presumption of prejudice to the State.³

In an attempt to excuse his procedural defects, Van Wormer first argued that his trial counsel refused to file a direct appeal on his behalf, despite a request to do so. An appeal deprivation claim does not establish good cause to excuse an untimely petition if the petitioner could reasonably have raised it during the statutory time period.⁴ Even assuming Van Wormer's trial counsel refused to file a direct appeal, Van Wormer failed to provide any explanation whatsoever for his subsequent nineteen-year delay in filing the instant petition.⁵ As such, the district court did not err in concluding that Van Wormer's appeal deprivation claim did not constitute good cause to overcome the procedural bars.

¹See NRS 34.726(1). Contrary to Van Wormer's assertion, the statutory time period for filing a post-conviction petition for a writ of habeas corpus is not measured from this court's latest decision concerning his case.

²See id.

³See NRS 34.800(2).


⁴Hathaway v. State, 119 Nev. 248, 253, 71 P.3d 503, 507 (2003); see also Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998).

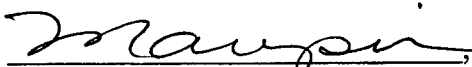
⁵See Hathaway, 119 Nev. at 255, 71 P.3d at 508 (holding that good cause may be established "if the petitioner establishes that the petitioner reasonably believed that counsel had filed an appeal and that the petitioner filed a habeas corpus petition within a reasonable time after learning that a direct appeal had not been filed").

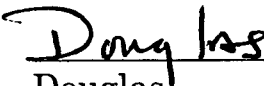
Van Wormer further claimed that his untimely petition should be excused because his trial counsel failed to give Van Wormer his files. In Hood v. State, this court specifically held that trial counsel's failure to turn over a petitioner's files did not constitute good cause to excuse an untimely petition.⁶ Consequently, the district court did not err in denying Van Wormer's petition.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Van Wormer 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

⁶111 Nev. 335, 338, 890 P.2d 797, 798 (1995).

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

⁸We have reviewed all documents that Van Wormer 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 Van Wormer has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Jackie Glass, District Judge
Robert E. Van Wormer
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk