

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANGEL JAVIER DIAZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42598

FILED

NOV 15 2004

ORDER OF AFFIRMANCE

JANETIE 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 Angel Diaz's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On December 14, 2000, the district court convicted Diaz, pursuant to a guilty plea, of second-degree murder with the use of a deadly weapon and battery with the use of a deadly weapon. The district court sentenced Diaz to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after ten years for the murder conviction, to be served concurrently with a term of 24 to 96 months for the battery conviction. Diaz did not file a direct appeal.

On July 14, 2003, Diaz, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On November 5, 2003, the district court denied Diaz's petition, concluding that it was procedurally barred. Diaz appeals, arguing that the district court erred in finding that he did not provide good cause to excuse his untimely petition.¹

¹We note that Diaz is represented by counsel in this appeal.

Diaz filed his petition more than two and a half years after entry of his judgment of conviction. Thus, his petition was untimely filed.² Diaz's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.³

In an attempt to demonstrate good cause for the delay, Diaz argues that his guilty plea was not voluntarily entered because he was denied the right to pursue a legal insanity defense at trial. Diaz contends that he did not raise this claim during the statutory time period for filing a post-conviction habeas corpus petition because this court did not issue its decision in Finger v. State⁴ until 2001. In Finger, this court held that the 1995 legislative amendments abolishing the insanity defense were unconstitutional.⁵ Diaz further argues that his delay in filing the instant petition after the issuance of Finger was due to his lack of counsel and unfamiliarity with the law.

This district court did not err in concluding that Diaz failed to demonstrate good cause to excuse his untimely petition. Although this court issued its decision in Finger on July 24, 2001, Diaz did not file the instant petition until nearly two years had elapsed. Diaz's unfamiliarity with the law does not provide the necessary good cause to excuse this

²See NRS 34.726(1).

³See id.

⁴117 Nev. 548, 27 P.3d 66 (2001).

⁵Id. at 575, 27 P.3d at 84; see also 1995 Nev. Stat., ch. 637, at 2448-85.

subsequent delay.⁶ Further, Diaz will not be unduly prejudiced by the dismissal of his petition because he failed to demonstrate that he wished to pursue an insanity defense at the time he entered his guilty plea and was prevented from doing so.⁷

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Diaz is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

⁶See Phelps v. Director, Prisons, 104 Nev. 656, 660, 764 P.2d 1303, 1306 (1988) (holding that organic brain damage and lack of legal assistance are not sufficient good cause).

⁷Cf. Finger, 117 Nev. 548, 27 P.3d 66 (defendant had extensive history of mental illness, was initially deemed incompetent to stand trial, attempted to enter a plea of not guilty by reason of insanity, and entered a plea of guilty but mentally ill); O'Guinn v. State, 118 Nev. 849, 59 P.3d 488 (2002).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Sally L. Loehrer, District Judge
Kirk T. Kennedy
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk